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THE CHIEFTAINSHIP IN BASUTOLAND

An important case involving the office of Paramount Chief of Basutoland was heard in the High Court of Basutoland in 1943. By permission of the Resident Commissioner we publish below the full text of the judgment delivered by Mr. Justice C. W. H. Lansdown. A good deal of evidence was heard on the question of women's status under Sotho law and custom. The court found that the people were changing from the idea of the family unit towards a larger appreciation of the rights of the individual. The practice of appointing women to the post of chief, sub-chief, and headman had encouraged the emergence of women from the state of tutelage which applied to them in earlier times. The court held further that the custom of *kenela* whereby a man can step into his deceased brother's place in relation to the widow in all matters of property and guardianship had declined to such an extent that it was no longer binding upon women. Although there was no precedent for the appointment as Regent of the senior widow of a paramount chief, there had been many cases in which the senior widows of chiefs had been appointed to vacant chieftainships for their minor sons. In the present case the proper procedure had been followed, and the position of the chieftainess was unassailable.

The plaintiff in the case was Chief Constantinus Bering Griffith, and the defendant Chieftainess Amelia 'Mantsebo Seeiso Griffith.

THE PLAINTIFF'S CLAIMS

This action is instituted by the plaintiff for the purpose of establishing that he is entitled and was, as from the 27th December, 1940, entitled, to be appointed Regent and Acting Paramount Chief of Basutoland during the minority of the now five years old child Bereng Seeiso Griffith, the son and heir of the late Paramount Chief of Basutoland, Seeiso Griffith Lerotholi, who died on the 26th December, 1940; that he, plaintiff, is entitled to be the sole guardian, custodian and controller of the said child during his minority; and that, for the same period, he is entitled to the sole possession, control and administration of all assets in the estate of the late Paramount Chief. He claims declarations to this effect, and corresponding orders that the defendant, who was appointed Regent and Acting Paramount Chief on the 30th January, 1941, shall forthwith cease to exercise any rights or powers under such appointment; that she shall forthwith deliver the child to plaintiff; that she shall render to plaintiff a full account, supported by vouchers, of her dealings with the assets of the late Paramount Chief; and that such account shall be debated and payment made to plaintiff in his capacity as guardian of the child, of all moneys found to be due, and the delivery made to him of all other assets claimable by him in his capacity as the child's guardian.

Plaintiff is the only son of 'Mabereng the third wife of the Paramount Chief Griffith who died in 1939. Of the senior wife, or first House, of Griffith there was no male issue. To Griffith's second wife, 'Maseeiso, there was born in 1905 a son, Seeiso Griffith, who, upon Griffith's death in

1939, became Paramount Chief. The plaintiff was born in 1902. Later in this Judgment reference will be made to the claim, put forward in Griffith's life-time and at his death, that the plaintiff, older by three years than his half-brother Seeiso Griffith, was entitled, on Griffith's death, to succeed to the Paramount Chieftainship. The defendant (who now, after the custom of Basuto woman to call herself by the name of her first-born child, with the prefix 'Ma is known as 'Mantšebo) was the senior wife of the Paramount Chief Seeiso Griffith, and thus bore the courtesy title of Chieftainess. She has a daughter Ntšebo, but no male issue. Seeiso Griffith's second wife, 'Mabereng, is the mother of Bereng Seeiso Griffith, the boy whose guardianship is now in dispute. It is common cause that he is, by Basuto Law and Custom, the heir of his father, Seeiso Griffith, who died on the 26th December, 1940, but he cannot receive the High Commissioner's recognition as Paramount Chief or become entitled to assume the functions of the office until he shall have reached man's estate which, in Basuto custom, will not necessarily be coincident with the attainment of the age of twenty-one.

On the death of the Paramount Chief Seeiso Griffith on the 26th December, 1940, proceedings were set afoot for the appointment of a Regent and Acting Paramount Chief who should fill the duties of this office during the period of age incompetency of the boy Bereng Seeiso Griffith. After certain proceedings, the legality of which is questioned in this case, and which will form the subject of consideration later in this judgment, the defendant, 'Mantšebo, as the senior wife of the deceased Paramount Chief, was nominated for the office and thereafter recognised by the High Commissioner, and upon her, as such and as the senior widow of her family, has devolved the custody and administration of the estate of the late Paramount Chief and the guardianship of his heir.

In support of his claims the Plaintiff has advanced the following main contentions :—

(1) That being a woman, the defendant is, by Basuto Law and Custom, incompetent to succeed to a Chieftainship or to hold the office of Regent and Acting Paramount Chief.

(2) That for the same reasons she is incompetent to be the guardian of a child or to administer any estate ; but that on the contrary she is herself under guardianship.

(3) That by Basuto Law and Custom, the Plaintiff, on the death of his brother, the late Paramount Chief Seeiso Griffith, obtained the right to assume his place as husband of his widows, or, if they should object to cohabitation, as guardian of them and their children and controller and administrator of their respective Houses and the property belonging thereto, and that he is wrongfully denied this right.

(4) As alternative to contention No. 1, that the procedure consequent upon the death of the late Paramount Chief Seeiso Griffith, and which resulted in the assumption by defendant of the rights and duties of the office of Regent and Acting Paramount Chief during the incompetency of the heir, was irregular and illegal, and that under the lawful procedure these rights and duties would have devolved upon the plaintiff.

These propositions will be dealt with in their order ; but a particular examination of the contentions of paragraphs 1 and 2 may conveniently wait until certain considerations common to both of them are set out. Plaintiff's general contention under these heads is that, under Basuto Law and Custom, a woman is incompetent to fill any administrative office ; that she is not *sui juris*— that, whether as maiden, wife or widow, she is entirely subject to the control of the male head of her family be he father, husband, or father-in-law or head of the family in place of the father-in-law ; that she can never become the owner and controller of property ; that she has *no locus standi in judicio ;* and that all matters concerning her or the property of her House can only be transacted by the male head of her family.

PLAINTIFF'S FIRST CONTENTION

Under the early Basuto social system, which was wholly polygamist, the husband was the head of the family, with some limited authority over him by his father if still living ; each of his wives had a House of her own with cattle assigned to it,

and the property of one House could not be used for the purposes of another; the first wife held a position of seniority in relation to the junior wives which entitled her to the respect of the latter. When the husband died, the property of each House devolved upon the eldest son of that House, but the widow and her children were entitled to maintenance out of it. Under such a domestic system there was little room for the exercise of any authority by a wife or widow. Nevertheless, she was not without her rights in respect of her treatment by her husband or his father who might be in a position of some authority as head of the kraal or village, or in respect of the property of her House; nor was she deprived of remedy, for she appears to have had access to the court of the Chief, although usually she would have sought such access through the medium of some male representative.

A custom, has, however, grown up and is now, I find, frequently, though perhaps not universally practised under which a wife, on the death of her husband leaving his eldest son a minor, has become the controller and administrator of the affairs of her own House, subject, it is true, to the influence and advice of the male head of the family, namely the father-in-law if he still be living, or, if not, his senior surviving adult son, now head of the kraal or village in his place, or in some cases of the adult male members of the deceased husband's family collectively. Indeed, amongst the chieftain class, it has become a very usual practice which probably has arisen through distrust of the child's paternal uncle and fear lest he should abuse the property of the House and usurp the chieftainship, that a wife, on the death of her chieftain husband leaving a minor son, has been appointed to hold the chieftainship as Regent until the attainment of age competency by the son, and in consequence has assumed control of the chiefdom or ward. It was admitted in evidence by Mr. Kennan, the Government Secretary that when the Government appoints a woman to a chieftainship or headmanship as a Regent for her minor son, it does not purport to take any hand in the control or disposition of her domestic affairs. It will, however, be well understood that it would be wholly inconsistent with the position of such a woman that she should in any of her affairs be subject to the control of some male person who would not only in respect of herself be in a position of authority but would have power to administer her property, in respect of which there would be probably no clear demarcation of what was domestic and what pertained to the chiefdom or headmanship. I accept, therefore, the evidence of those witnesses who state that, in the case of a woman chief or headman, the official position has always carried with it the guardianship of her children and the control and administration of the property of her House, subject, of course, to the limitation that the heir of such property is the son for whom she is acting as regent and who when he attains the age of competency will acquire the full ownership and possession subject to the obligation of maintaining his mother and her minor children. Any maladministration of such property by the mother would undoubtedly give remedy to the heir when he should reach the age of competency, or before that age, to anyone representing him who might be disposed to take action against his mother.

There is ample confirmation of the status attained in this respect by women of the chieftain class. In 1938, Proclamation No. 62 was promulgated for the purpose, *inter alia*, of making better provision for the recognition, constitution, powers and jurisdiction of Courts of Native Chiefs, and for the suspension and dismissal of members; and in Section 35 it was provided that, notwithstanding anything in the Proclamation contained, any Native Court in the Territory exercising jurisdiction in accordance with Native Customs at the commencement of the Proclamation should continue to exercise such jurisdiction for a period of six months unless the Resident Commissioner should earlier terminate it, or unless a Warrant should sooner be issued establishing it as a Native Court under the Proclamation. Under these provisions it became necessary for a record to be framed of Native Chiefs' Courts in the Territory, all of which hitherto had been constituted under the authority not of the Government but of the Paramount Chief. Mr. Armstrong, a District

Commissioner, and Chief Thabo Lechesa, a representative of the Paramount Chief, were commissioned to frame the Register. It was found that of the Native Chief courts—some 1300 in number —many were presided over by women, either in the capacity of Chief, Sub-Chief or Headman. These women at the same time exercised administrative functions as such; some held office in their own right and some as regents for their minor sons. Subject to minor alterations, these courts have continued and are in existence and functioning to-day. Ten of these women Chiefs, Sub-Chiefs or Headmen have given evidence before me in this case. They were mostly elderly or of middle age, all of acute intelligence, suggesting, by their appearance and their ability to answer the questions put to them, that their preferment to the position had been a matter of consideration by the appointing authority, and that they were competent to discharge the functions committed to them. Some of them worked under the Paramount Chief or chief superior to themselves, but their decisions were their own. In some cases, these women themselves sit or sat for the hearing of disputes; in the majority, however, they hear or heard cases through councillors appointed by them, merely reserving to themselves the functions of considering, and of approving or reversing or varying, a proposed judgment. In addition, these women Chiefs, Sub-Chiefs or Headmen perform, apparently to the satisfaction of the Government authorities, who exercise a statutory power of dismissal, the ordinary functions of such offices. They collect taxes and themselves receive the Government gratuities in respect thereof, allot lands, and issue cattle removal and other permits required by law. In general, the practice appears to have satisfied public requirements, and it is certainly not of recent origin. The witness Mathe Tau, one of the oldest of the ten women who gave evidence filled the office of chief of her Ward from 1914, to 1937, when her son Khethisa was installed in the Chieftainship, for whom she had acted as regent. Two other of the women chiefs who gave evidence had received their appointments at about the same time as Mathe Tau. A considerable number of other names have been quoted in evidence of women it was said have in Basutoland filled or are presently filling, the office of chief, sub-chief or headman, whether in their own right or as regents for minor sons. Since the assertions as to the past depend mostly upon evidence of repute, they must necessarily carry less conviction than evidence confirmed or supported by official records or the *viva voce* testimony of the women concerned. Nevertheless I am satisfied that in the past women have not infrequently filled these offices.

In the cases of many of these women chiefs, sub-chiefs and headmen of to-day evidence for the plaintiff has sought to show that they are or were not of independant position but subject, under the system of *kenela* to be referred to later, to the control of a man who stood to them in the relationship of *mokeneli*. In two or three instances this has been accompanied by evidence that the woman concerned bore a child or children out of wedlock after her husband's death and during her so-called regime. I have in each instance carefully considered this evidence, but in no case have I been able to come to the conclusion that the woman concerned has been in a subject position. In two instances the lapses from virtue have been admitted by the women concerned but this, in a society where illegitimacy does not carry with it all the odious connotation which it bears under a fully civilised monogamous system, is not of profound significance. As I have indicated *supra* I have accepted the evidence of those witnesses who state that a woman chief, sub-chief or headman has always combined with her official position a freedom from outside guardianship and a power of controlling and administering the property of her House.

It would appear then, that amongst the chieftain class of the Basuto people—and it is with that class that we are concerned in the main issue of this case—there has been a development in the status of women which entirely negatives the proposition, submitted for the plaintiff, that they are not *sui juris* and are incapable in law of holding administrative office, being guardians of children, or controlling and administering property. And, probably following the example of the

chieftain class in this respect, the status of the commoner class of women has likewise undergone development in like manner although in much less degree. I think it very probable, though naturally little evidence has been addressed to this point, that amongst the kraals and native villages of the Territory many instances might be discovered of adherence to the old system under which women were in an unchanging state of tutelage. This does not, however, detract from my main propositions in this connection.

A good deal of evidence has been addressed to the question whether a woman may sue or be sued in her own name. For any wrong done to an unmarried woman or a woman *stante matrimonio* remedy would undoubtedly be sought by the father or husband respectively, but in respect of a widow or of a woman holding a position as chief, sub-chief or headman, there is much evidence to show that action by or against her would be in her own name. Court records have been exhibited in which this has been the position in twelve cases in this Court or its predecessor, the Resident Commissioner's Court, ranging from 1929 to 1941 ; and within approximately the same period there are nine records of the Paramount Chief's Court and one in a District Commissioner's Court in which women have so figured. I have not been enabled to analyse the causes of action in these cases, and I am not in a position to deduce any general rule of practice on the matter, but the evidence before me has been sufficient to disprove any general allegation that a woman has in Basutoland no *locus standi in judicio*. The matter has no direct bearing upon this case and is of interest only as tending to show the present day status of Basutoland women. I observe from Mr. Seymour's book on Native Law and Custom (p. 63), which has been referred to in evidence, that in the Transkeian Territories a widow is regarded as a major who may sue or be sued without assistance.

In a country like Basutoland where customary practices are in general inconstant, tending, under the influence of Christianity, education, and other forces, to the improvement of a primitive social system, to the elimination of feudal privileges, and to the advance from the idea of the family unit towards a larger appreciation of the rights of the individual, it is found undesirable to endeavour to reduce custom to written law, for thereby that which is in course of wholesome development would tend to become static. In or about 1903 during the regime, as Paramount Chief of Lerotholi (1891-1905) an attempt, not sponsored by the Government, was made—possibly for the assistance of the Native Chief Courts—to reduce to writing some of the customs of general application ; and the resultant code, commonly styled " The Laws of Lerotholi " but which I shall call " the Lerotholi Code ", consisting of some twenty-five sections, was in 1922 amended by the National Council of Basutoland, an advisory body constituted in 1903 and which received statutory recognition by Proclamation No. 7 of 1910. No legislative authority or official recognition has been extended to this code ; nevertheless it is helpful, though not conclusive, on any question as to the existence or extent of any customary practice amongst the Basuto people

It has been contended for the plaintiff that in the determining of any question relating to Basuto Law and Custom and, in particular, in rules of marriage and inheritance, the Court may in general be guided by the practices of other nations or tribes in South Africa of the Bantu race ; and plaintiff's counsel has submitted, as authorities which may be adopted, several decisions of the Native Appeal Courts of the Cape Province of the Union and Mr. Seymour's useful book on " Native Law and Custom " written in 1910, which is, for the most part, based upon the Native Law and Custom as practised in the Transkeian Territories of the Cape Province. Great caution, however, is necessary in seeking any guidance from these authorities. There is, it is true, a general analogy between the practices, particularly in the matter of marriage and inheritance, of the Native races of the South and those of the Basuto ; but it is clear that there are marked divergences which only careful investigation and comparison of the practices of both can determine. There are in the Matatiele and Mount Fletcher districts of the Cape Province, which are adjacent to Basutoland,

some 24,000 Basutos who are under the immediate governance of a Basuto Chief Jeremiah Moshesh, a grandson of the first Paramount Chief, who controls this people in accordance with Basuto Law and Custom, which also is applied to them by the Native Appeal Court operating in that portion of the Cape Province. In so far as that Court purports to administer Basuto Laws and Customs, its decisions, while not authoritative in this Territory, will, of course, be regarded with great respect. Mr. Seymour, whose book as I have stated deals mainly with the practices of the Transkeian Bantu tribes, has worked in the districts of Matatiele and Mount Fletcher, but he gave evidence in this case from which it may clearly be gathered that, while he was disposed to regard the Basuto law of marriage and succession as practically identical with that operating in the South, there were radical differences to which he had not been enabled to devote attention. Thus he admitted that he had not known of any woman chief in the Transkeian Territories, and it is clear that he had not been enabled to devote attention to the divergences of custom in Basutoland which had resulted from such a practice in that Territory, nor had he studied Basuto customs as set forth in the Lerotholi Code or contemplated the statement in Section 15 thereof that if a man died leaving only female children the widow should be heiress of his estate and property. Great caution must therfore be exercised in accepting as applicable to Basutoland any law or custom operative in other Native Territories. For approximately a century the Basutos have been separated off from the remainder of the Bantu peoples, and it is to be expected that their customs, at one time no doubt closely akin to if not identical with those of the great body of Bantu people, have shown divergences and developments.

It is upon Section 1 of the Lerotholi Code that Mr. Grobler, for the plaintiff, mainly relies for proposition No. 1 *supra* which I shall now more particularly consider viz. that defendant is disqualified from holding the office of Regent and Paramount Chief. That section reads :

" Succession of Chieftainship in Basutoland shall be by right of birth. That is, the first born male of the first wife. If the first wife has no male issue then the first born male child of the next wife in succession shall be heir to the Chieftainship. Be it known that this law of succession in Basutoland shall ever so continue and shall be supported by the Basutoland Council."

I shall later deal with the question whether the filling by the defendant of the Office of regent and Paramount Chief is a succession. Mr. Grobler for the plaintiff claims that it is, and indeed he was constrained to admit that for however short a period a person may so be acting he would be a successor for the purpose of section 1 of the Lerotholi Code. For the present I shall consider the question on the basis that this contention is correct. If it is not, then section 1 of the Code is inapplicable.

Now the Lerotholi Code is in no sense written law. Its provisions, though reduced to print, do not emanate from any lawgiver. The problem immediately before us in respect of Section 1 is whether the statement it makes is that of a custom so well and firmly established that it has the force of law. It was first set out in or about 1903 and for the second time in 1922 when presumably it came under the attention of the National Council. Yet at these very times there were, as has appeared *supra*, many women in Basutoland holding the office of Chief, Sub-Chief or Headman, some in own right and some as regents for minor sons. Mr. Grobler for the plaintiff, realising that with these many and important exceptions to its provisions Section 1 of the Code could hardly be said to embody a well established custom, contends that the appointments of the women were illegal, but I find it impossible to accept that contention. They were all made under State authority—those before 1938 by the Paramount Chief, those after that date by the Government.

The position, as it seems to me, is that while Section 1 of the Lerotholi Code sets out the rule more usually followed, a contrary practice has crept in and is now in force to such an extent as to make it impossible for me to affirm that the Section sets forth a custom so well established that it has the force of law. In Van Breda and others vs.

Jacob & others (1921, A.D. p. 334), Solomon, J.A., delivering the judgment of the Court, stated that there was a marked agreement between Roman Dutch and the English law as to what was necessary to be proved in order to establish a valid custom, and he continued :—

" In Halsbury (vol. 10 par. 423), it is laid down that a custom to be valid must have four essentials,—first it must be immemorial, secondly it must be reasonable, thirdly it must have continued without exception since its immemorial origin, and fourthly it must be certain. These are substantially the same characteristics as set forth in Voet, 1.3.27-35, where it is stated that a custom to be valid must be an ancient and long-established one, must be reasonable, must have been uniformly observed, and that the witnesses who speak to it must not ' vary in regard to the relative circumstances of the act in regard to time, thing and place,' which I take it is only another way of saying that the custom must be proved to be certain."

On the assumption upon which we are presently acting that the holder of an acting appointment is a successor, there have been so many successions contrary to the provision that, in my opinion, it would be impossible to treat it as a well established custom.

I am referred to the judgment of this Court, on the 9th May, 1940 ,in the case of Joel Motsoene versus Seeiso Griffith and another, in which Huggard, J. decided a question of succession to a chieftainship by reference to Section 1 of the Lerotholi Code. Early in his judgment the learned judge stated :—

" It is admitted that the question of succession to all chieftainships in Basutoland is governed by Basuto law and custom, and the law on the subject has been codified in a pamphlet entitled " Basutoland Laws of Lerotholi " which has been handed in and which is accepted by all parties as correctly representing the law."

and then he proceeded to quote Section 1 of the Code. But the admission made for the purpose of that case and the adoption by the Court of that admission are not facts from which, in my opinion may be deduced any affirmation by the Court of the universal validity and applicability of the provision of the section. Nor can I gather any such inference from the fact that in the case of Setsomi and another versus Motsoene, heard in 1930, in the court of the Resident Commissioner the predecessor of this Court, the presiding Judicial Commissioner, stated in the course of his judgment : " It is a fundamental principle of Basuto Law that succession to chieftainship is through the male line of the senior son ".

I come to the conclusion, therefore, on plaintiff's contention No. 1, that defendant is not disqualified from holding the office of Regent and Acting Paramount Chief.

PLAINTIFF'S SECOND CONTENTION

I come now to the more particular consideration of plaintiff's second contention, viz. that defendant, being a woman, is under Basuto Law and Custom incompetent to be the guardian of a child and to administer any estate, but that on the contrary she is herself under guardianship. I have already considered, to some extent and in general, the question of the disabilities of native women in Basutoland and shown that under the influence of the practice of appointing women to the posts of chief, sub-chief and headman there has been an emergence of women from that state of tutelage which in earlier times applied to them.

Much argument has been addressed to the question whether under Basuto Law and Custom a widow is capable of being the heiress of her late husband's estate in her own right, and without external control. For the plaintiff, it is contended that in Basutoland, as in other Native areas of South Africa, she is not so capable—see, e.g., Seymour p. 123, who states that " a woman cannot inherit property. According to strict Native Law a widow is herself the property of her late husband's heir. She cannot inherit even if no male heir to her husband's estate exists." For the defendant, it is denied that this is the position in Basutoland, and it is asserted that in general a widow is in many circumstances entitled to inherit the property of her House. Sections 14 and

15 of the Lerotholi Code have been quoted in this connection. Section 14 reads :—

> " The heir in Basutoland shall be the eldest male child of the first wife, but the heir must use the estate with his father's widow or widows and must share with his junior brothers according to rank of birth."

And section 15 reads :—

> " If a man dies leaving only female children, the widow shall be heiress to his estate and property, but she must work in conformity with the wishes of her deceased husband's people who shall in all matters be deemed her guardians."

These paragraphs seem to lend support to the statement, put before the Court by some of the witnesses for the defence, that the widow of a man who has died childless, or leaving only female children or minor males, is the heiress to his estate, but that in the last-mentioned case where the eldest son is not yet of man's estate, she while entitled to maintain herself and her family out of the property, is under the obligation to hold and administer it for the benefit of the eventual heir, and bound by custom to take the adult male members of her late husband's family into consultation. Much evidence and argument have been adduced to the interpretation of the word " guardians " appearing in Section 15 of the Lerotholi Code, which is a translation of the Sesuto " *balisa* ". It is clear that this word bears neither the denotation nor the connotation of the term " guardian " in English or South African law. In etymological origin it indicates " herd " or " caretaker " and, according to witnesses for the defence means no more, the ownership and real control residing in the owner who is subject to no other duty than that of consultation and, where possible, agreement with the wishes of her late husband's people. Witnesses for the plaintiff referred to the use of the word " *molisa* " (the singular of " *balisa* ") in the opening sentence of the Twenty-third Psalm and claimed that it has the the wider significance of power of administration, control and disposal, and they proceeded to state that in no case can a widow assert her will in respect of the property over that of the *molisa*. I regret that the evidence in this case does not enable me, for the purpose of facilitating future practice, to give a precise definition to the Native word, but I am satisfied that Section 15 of the Lerotholi Code supports the defence rather than the plaintiff's contention. Further support for this conclusion seems to me to be afforded by the evidence given in 1873, before a Native Laws and Customs Commission, by Chief George Moshesh, son of the first Paramount Chief, who, speaking of Basuto Law and Custom, stated, *inter alia*,—

> " The eldest son in each House inherits all the property which has been allotted by the father to that House. A widow can inherit cattle belonging to her House in case she has no male children at the death of her husband. . . Although I have said the eldest son of the House claims the cattle, I must explain that he is only acting for his mother who has charge of all her deceased husband's property during her life time belonging to her House, but at her death then it devolves upon the eldest son of the House."

This statement appears to me generally to accord with the provisions of Sections 14 and 15 of the Lerotholi Code, and to indicate that the widow is indeed, in relation to the property of her House, not in that strongly controlled position in which she would be if the plaintiff's definition of " *molisa* " were accepted. I am, therefore, unable to accept the general proposition of plaintiff's contention No. 2 that in Basutoland a woman is incompetent to be the guardian of a child or the administrator of an estate.

PLAINTIFF'S THIRD CONTENTION

But the plaintiff goes on to contend that the question of the guardianship of widows and their alleged inability to control and administer property is linked up with the question, to which a great amount of evidence has been adduced, whether the practice of *kenela* is a binding custom in Basutoland today. This brings me to the plaintiff's third contention which alleged the defendant's incompetence for the office she presently holds, on the ground of the relationship in which she stands to the plaintiff, it being contended that

the plaintiff, as the junior brother of defendant's now deceased husband, is entitled, under the Basuto custom called "*Kenela*", to step into his deceased brother's place in relation to the defendant, become her husband save as to access to her bed if she be unwilling, to be the controller of her House, the guardian of her child or any children under her control, and the administrator of her late husband's estate, with powers substantially co-equal to his when he was alive. So, too, it is contended, may the plaintiff, under the custom of *kenela*, step into the place of the deceased husband in reference to the other two widows of the deceased, thus becoming the guardian of the boy Bereng Seeiso Griffith, nowithstanding that he is not physically the son of the defendant. 'Maleshoboro, the third wife of the late Paramount Chief Seeiso Griffith, stated in evidence in this case that she admitted the right of the plaintiff to *kenela* her, but that she had been prevented from this, presumably by defendant in exercise of her authority as the senior widow.

The practice of *kenela* was undoubtedly general in the early history of the Basuto people, and possibly in an age in which the ranks of the men were constantly being depleted by tribal warfare, had much to commend it. A woman marrying into a family was regarded not so much as marrying the man to whom she was united, but rather as joining herself to his family, and indeed to-day it is frequently said that a wife is married to her husband's people. She had been bought from her own family by the payment of the dowry (*bohali*) and now belonged to the purchasing family. On the death of her husband, her relationship in respect of her husband's people underwent no change; nor was the death of the husband permitted to interfere with her function of increasing the family to which she now belonged. Accordingly, the father-in-law if still alive, or if not the now senior male member of the House who had replaced him, could charge a male member of the House, usually the brother of the deceased next junior to the latter, with the duty of raising up seed to the House of the deceased husband, and the man so charged would enter the House of the widow and assume, in every respect, the rights and privileges of her late husband. This would usually be done, however, only after a visit by the widow to the kraal of the latter's parents, accompanied by the man unless he was already married, where the widow's mourning clothes would be discarded and a beast slaughtered, and if the prospective husband was present the gall sprinkled and the gall bladder bound around his wrist. Sometimes there appears to have been variation of the practice to the extent that the head of the family, instead of charging the next junior brother of the deceased, would select another brother; and, indeed, the Chief George Moshesh (previously referred to,) in giving evidence in 1873 before the Native Affairs Commission (p. 45 Laws and Customs of Basutos, 1873) is reported to have said that the eldest surviving brother of the deceased might give his late brother's widows to other men as wives. There is however, no evidence in the present case, whether of experience or repute, to show that the selection of the *mokeneli* was made from outside the members of the deceased husband's family.

Much evidence has been adduced to the question whether this system of *kenela* still exists in the social life of the Basuto people and constitutes so well-established and reasonable a custom that the plaintiff is now entitled to *kenela* the Houses of his deceased brother the late Paramount Chief Seeiso Griffith, and thus assume the guardianship of his minor heir and control of his widows, with the property of their respective Houses including the late Seeiso Griffith's estate. Witnesses called on behalf of the plaintiff have affirmed this to be the case. Those called on behalf of the defendant have as confidently asserted that *kenela* has either already disappeared or is fast disappearing and is no longer practised generally amongst the Basuto nation. In support of their respective contentions, the merits of the system have been dwelt upon, on the one side it being asserted that *kenela* in a polygamous society is the lifeblood of the nation, the guarantee against widows and fatherless children sinking into poverty and depravity; while, on the other hand, it is contended that the system would perpetuate a degree of servitude entirely inconsistent with that stage

of civilisation to which the Basuto nation has advanced.

I am little concerned here with the merits or demerits of *kenela*, save in so far as they might tend to prove or disprove the present day existence of the practice, but I may point to the evidence of Mr. T. B. Kennan, the Government Secretary, on the subject of the Census figures for 1911 and 1936. The 1936 figures show the number of males in Basutoland as 240,265 and the number of females as 322,046; to these numbers, however, must be added as resident in but absent from Basutoland at the date of the census, 78,604 males and 22,669 females. Thus the total number of males was 318,869 and of females 344,715. Coming to the marriage statistics of the 1936 census, it is found that the percentage of polygamists was 11.3, and turning to the corresponding figure of the 1911 census, it is found that in that year the percentage of polygamists was 18.66. This affords some clear evidence in support of the statements of defence witnesses that the advance of Christianity and other civilising forces, added perhaps to the degree of inferiority which attaches to second and subsequent wives in relation to their senior, the first wife, has had a considerable effect upon polygamy amongst the Basuto, and that the nation is in process of becoming monogamous. Nor does it seem that the figures which have been quoted would permit of the continuance of a general system of polygamy.

We are concerned here then with the question whether *kenela* does in truth exist as a well-established and reasonable custom and, if so, whether, under Basuto Law and Custom, it must be applied to the plaintiff and the defendant in the present case. All the ten women Chiefs, Sub-Chiefs and Headmen who have appeared before me have denied that they have at any time been "*kenelaed*". In most instances their statements were subjected to the closest cross-examination, which in two or three of the cases elicited that during widowhood children had been born to them. From this it has been sought to deduce that the women concerned were indeed the subjects of "*kenela*". I have, however, in these cases, upon careful consideration of the relative evidence, come to the conclusion that the children were born in consequence of illicit intercourse and not in the practice of *kenela*. In the case of the woman Chief Mathe Tau, the evidence of Chief Setsomi Jonathan her brother-in-law, is that he "*kenelaed*" her, presumably shortly after her husband's death in 1914, but Mathe Tau herself strenuously denies this. On consideration of this and other evidence on the point and specially of the evidence of Mr. Kennan the Government Secretary, who dealt with her as a chief not subject to any subjection, I find the balance of proof is in favour of Mathe Tau's denial.

Nevertheless, I am not disposed to accept it that the practice of *kenela* has entirely disappeared from the Basuto social system. Giving evidence in 1904 before a Native Affairs Commission (South African Native Affairs Commission, 1903-5 Vol. IV page 392), Chief Jonathan, with whom were four other Basuto chiefs, affirmed that it was still in existence and should be kept up. The woman Chief Mathe Tau admitted in evidence that her over-Chief and father, Jonathan when installing her to her chiefdom in 1914 was pressed to consider the desirability of providing her with a *mokeneli* (under the *kenela* system, a man to replace her late husband) but he refused. Chief Griffith, when nominated for the Paramount Chieftainship in 1913, stated that he was not prepared to accept the office if it entailed upon him the duty of *kenela* in respect of the widows and Houses of his brother Letsie II, the recently deceased Paramount Chief. The defence witness, Headman Mapepe Nkhase of Leribe, an educated man who has spent ten years in the Civil Service of Basutoland and whom I found quite credible, while denying any present day practice of *kenela*, quoted a 1920 case in which his father as Headman had assented to a surviving brother taking over the widow and House of an elder deceased brother. Other defence witnesses have given a very few rare instances in which *kenela* has, by general agreement of all concerned, taken place. These instances tend to show that, at any rate within living memory, the practice of *kenela* had not fallen into total desuetude.

To assist in proving the present day universal existence of the practice, some instances have been adduced which, while they show an adherence in the Basuto mind to the strange idea of "raising seed for the grave", are not in truth instances of *kenela*, a practice which connotes the existence of the controlling "*mokeneli*". Thus the woman Chief 'Mathabo Tautona, who in the witness-box strenuously denied that she had been *kenelaed*, or that the practice still subsisted in Basutoland, nevertheless admitted that she had adopted into her family a man for whom she would arrange a marriage for the "raising of seed to the grave" of her late son; and the witness Chief Jeremiah Moshesh, in his statement as an assessor in the case of *Martha Magadla vs. Njobabo Gewadi and another*, a case on Basutoland custom decided by the Native Appeal Court of the Cape and Orange Free State 1940, 12, (p. 69) stated that the widow there concerned, who had no male relatives of her late husband, could sue for damages for the seduction of her daughter and might claim dowry cattle, adding that "cattle received in this way may be paid by the widow for another woman (wife) to raise seed to her late husband."

Another witness adduced to support the plaintiff's contention that *kenela* exists as a universal present day practice was one Agatha Griffith. She had been a junior wife of the late Paramount Chief Griffith. On his death in 1939 she had with considerable opposition by his then exisiting tale of wives, been taken to wife by Griffith's son, the late Paramount Chief Seeiso. Agatha admitted that there had, before her marriage to Griffith, been a love affair between her and Seeiso in the course of which the latter had desired to abduct her. After Griffith's death this bond had been renewed, with the consequent marriage to Seeiso. There had been no *kenela* ceremony, nor had her parents been consulted, but Agatha nevertheless stated her opinion that Seeiso had *kenelaed* her and was entitled to do so, and that the child born to her and Seeiso belonged to the cattle, i.e. was a child of the House of Griffith who had paid *bohali* for her. I am unable to accept this incident as an instance of the practice of *kenela*. The relationship of stepmother and stepson between the two suggests otherwise, and seems to me to point to the fact that the marriage of Seeiso and Agatha was an ordinary instance of the resumption and consummation of an interrupted love affair. Moreover, had the practice of *kenela* been general and had this incident been an instance of it, I think there would have been no room for opposition by Seeiso's wives.

While I am not prepared to concede that *kenela* has disappeared from the memory of the present generation, and while I am of the belief that instances of the practice will still be found in some of the kraals of the country, I definitely reject the evidence of those witnesses of the plaintiff who assert that it is in present day existence amongst the nation as a universally practised custom. The women Chiefs, Sub-Chiefs and Headmen who have appeared before me have satisfied me that they and many of their kind have not been subject to the practice. Paramount Chief Griffith definitely rejected it in his case in 1913, as also did Chief Johathan in 1914 in the case of his daughter Mathe Tau. It is established that *kenela* in the sense of a sharing of her bed could be rejected by any woman to whom it was proposed. The main purpose of the practice, namely the raising of seed to the House of the deceased man, has thus been vitally attacked at its root; and the remaining part of the practice, namely the control of the widow with her children and the administration of the property of the deceased, has not, in my judgment, survived in such a way as to enable the Court to say that it is a long-established and reasonable custom which must be enforced as law in the Basuto family life. That there are many instances in which the wife of a deceased man receives assistance and counsel from her husband's family, including his surviving brother or brothers, does not alter this position. Nor is the situation affected by the fact that the widow of a man is, in theory, after her husband's death, still a member of her deceased husband's family. There is a considerable body of evidence that thus a widow is reduced to the position that she cannot remarry since she is already allied by marriage to her deceased husband's House—an

unfortunate position, since she would thus be condemned to perpetual widowhood, and her late husband's family would lose the "*bohali*" paid to the woman's family in consideration of the marriage, their only compensation being any children she had borne in wedlock. There is some evidence, albeit slight, that in such a position a woman might emerge from her husband's family by an arranged so-called divorce, leaving behind her her children and her husband's estate, with the possibility of the children being regarded as adequate compensation for the "*bohali*", or of her own family being required to refund the "*bohali*".

No case has been quoted in this Court or its predecessor, the Court of the Resident Commissioner, in which the present day existence of the custom of "*kenela*" has directly been affirmed. The witness Labane Chokobane, a commoner who seemed to be about eighty years of age, was of the view, and I think *bona fide*, that he had been compelled by a judgment on appeal of the Acting Deputy Resident Commissioner, in 1921, to continue in maintenance *kenela* (i.e. *kenela* without cohabitation) in respect of the woman Jessie Chokobane (alias Mapirisi), the wife of his late brother, and her children. A reference, however, to the records of this litigation which have been put in, shows that there were complications in this case, and it cannot be gathered from the judgments that the present day existence of the custom was directly affirmed. It appears that from the death of the woman's husband she and her children lived under the protection of Labane Chokobane, and that he had possession of her late husband's stock and property. After some nine years of this living together, quarrels arose between Mapirisi and Chokobane who threatened to drive her away. She appealed for protection to the court of the Chief, who appears to have decided that Chokobane had no right to adopt such a course and that, if he did so, he must not retain the woman's children or her stock. The woman then appears to have lived with her own people for some time, and then at or about the time of the birth to her of an illegitimate child, to have returned to Chokobane, who refused to receive her, although at this time he still held the woman's property and livestock. The Court of the Assistant Commissioner, which dealt with the matter on appeal from the Native Chief's Court held that there was no reason why Mapirisi should be forced to leave the caretaking of Chokobane, and he was ordered to provide for her and her children and support them according to their station in life ; and it was further ordered that an inventory be taken of the stock in the estate of the woman's late husband, which was in Chokobane's possession. Chokobane appealed to the Court of the Resident Commissioner mainly on the ground that the marriage of Mapirisi had been by Christian rites and that there was no applicable law which could hold him to support her and her children. The Acting Deputy Resident Commissioner, prefacing his judgment by the statement that the grounds for appeal opened up what might eventually be a very important matter with regard to the Basuto in general, dismissed the appeal, holding that the marriage by Christian rites did not bring, as a consequence, a surrender of nationality or customs, and he referred to Clause 12 of Proclamation No. 2B of 1884, which provided, *inter alia*, that, in any suit, action or proceeding in any court to which all the parties are Natives, Native law may be administered. It would seem then, in this case that there was no direct affirmation of the existence at the date of judgment in 1921 of the custom of *kenela*, but that the particular circumstances of the case, and especially the fact that for nine years Mapirisi had been supported by Chokobane, who held the property out of which manifestly the woman and her children must be maintained, were the main facts which influenced the decision.

My conclusion that *kenela* has nowadays no such validity as would enable me to concede plaintiff's claim in this respect is strongly supported by the evidence of Mr. T. B. Kennan, Government Secretary, who has had thirty-three years of varied service in Basutoland, during the course of which he has worked in every district of the Territory. He not only affirms that the women Chiefs Malihotetso and Mathe Tau were, to his direct knowledge, working as such, independent

of any *kenela* control, but definitely states that, while the custom of *kenela* has not wholly disappeared, it is a decadent system and that he would not, as magistrate, in a simple and uncomplicated question of whether a man was entitled to assume control, whether with or without cohabitation, of the wife of his deceased brother and of his estate, affirm such a right by reason of its being a reasonable and well-established custom. Other defence witnesses who are or have been members of various native courts have affirmed that, save at the request of the man and woman concerned and with the consent of the families of each, they would give no countenance to *kenela*.

No system or course of practice can indeed be said to amount to a reasonable and well-established custom with force of law which, having once flourished is now decadent and, to a considerable degree, in disuse. I therefore find that the claim of the plaintiff's third contention that he is entitled, by reason of his relationship to the defendant or any other widow of his deceased brother the late Paramount Chief Seeiso Griffith, to the custody and control of the boy Bereng Seeiso Griffith and to the control, possession and administration of the estate of his deceased brother and the House of the defendant fails.

PLAINTIFF'S FOURTH CONTENTION

I now come to the fourth of plaintiff's main contentions, namely that the procedure consequent upon the death of the Paramount Chief Seeiso Griffith, and which resulted in the assumption by the defendant of the rights and duties of the office of Regent and Acting Paramount Chief for the period of the incompetency of the heir was irregular and illegal, and that under the lawful procedure the appointment would have devolved upon the plaintiff. He presents this as an alternative in the event of the failure of his first contention that defendant is unqualified by her sex for chieftainship. Before setting out the procedure which was adopted in this case, and the legality of which is questioned, I must refer as briefly as may be, to the history of the Paramount Chieftainship, and to the procedure by which, on occasions previous to the present, a vacancy in the office has been filled. The first holder of the office was Moshesh, who died in 1870 after a long reign. He is universally regarded as the Father of the Basuto nation, and rightly so, for he it was who established the unity of the various Basuto tribes which compose the nation, and, in 1868, brought them as a national entity within the protection of the British Crown. On Moshesh's death in 1870, he was succeeded by Letsie I, the eldest son of his senior House; but there are no official records to show the procedure by which Letsie I was selected, nor is there any evidence available to elucidate this. To Letsie were born 18 sons, and to his three brothers of Moshesh's senior House (Molapo, Masupha and Majara) were born respectively 12, 9 and 6 sons.

Letsie I held office from 1870 to 1891. At his death the Resident Commissioner addressed a letter, dated the 23rd November, 1891, to his eldest and most senior son Lerotholi, intimating that some formal installation should take place of the successor to the Paramount Chieftainship, so that no question might thereafter arise on the subject. The Resident Commissioner advised that the Chiefs-in-Council should send through him a message to the High Commissioner giving their views as to who was entitled to succeed, whereupon Her Majesty's Government could say if it agreed or not and the decision could be published to the nation. The Resident Commissioner added that, until this procedure was adopted, he would regard Lerotholi as Acting in his Father's place. On the 26th November, 1891, in reply to a letter from Lerotholi, which is not before the Court since it cannot be found in the records, the Resident Commissioner informed him that, before Letsie's death, the Chiefs Jonathan Molapo and Masupha had informed the Resident Commissioner that Lerotholi's position as regards succession was unassailable; that he, the Resident Commissioner, would forward Lerotholi's letter at once to the High Commissioner, if he wished; "but, in my opinion, surprise will be felt when a custom of the Basuto is appealed to that such a custom should be witnessed by the sons of Letsie alone; in all such important national matters, your father appealed not to his sons alone

but to his brothers and other principal chiefs, and their names are known to the Government. The reason will be asked why their signatures are not attached to your letter." The Resident Commissioner added, "Your brothers are, I think, wrong in saying that I am inaugurating a new way of acting in Basutoland. Moshesh introduced Letsi to the nation during his lifetime as his successor, though no one could question Letsie's birthright. I myself urged Letsie to similarly introduce his successor. Masupha told me he did the same, but Letsie replied that there was time enough, and died before he did so." In response to this letter, a letter signed by sixteen Chiefs, described by the Resident Commissioner at the time as all the principal Chiefs in Basutoland, was addressed to the Resident Commissioner on the 7th December, 1891, advising him of the death of Letsie I, and "that the one who is now entitled to be our father's successor to the Paramount Chieftainship over the whole of Basutoland is Letsie's eldest son Lerotholi, and it is also so according to Sesuto custom, and also to right of birth, and also as to what was also shown us by our father in all works connected with this country."

This letter was transmitted by the Resident Commissioner to the High Commissioner with a recommendation that Her Majesty's Government would be pleased to acknowledge Lerotholi as Paramount Chief in place of his late father Letsie I. Mr. Kennan's evidence shows that of the sixteen signatories to this letter, one, Masupha, was a son of Moshesh; seven were sons of Letsie I, and therefore grandons of Moshesh; three were grandsons of Moshesh through his sons Molapo and Majara; one was son of a full-brother, one was son of a half-brother, and two were nephews of Moshesh; and one was related to Moshesh in some other manner. Following on this letter, Lerotholi was acknowledged as Paramount Chief and held office until his death in 1905.

Upon that event, a letter dated the 18th September, 1905, signed by thirty-one chiefs, who described themselves as chiefs and members of the Basutoland Council, was sent to the Resident Commissioner nominating Letsie II, Lerotholi's eldest and most senior son, as his successor, the writers stating "We bring him forward as the Chief and heir of this Basuto nation and the caretaker of the Basuto," and adding. "We ask, with respect, that His Majesty the King and High Commissioner may recognise Letsie as the Paramount Chief of the Basuto." In transmitting this letter to the High Commissioner, the Resident Commissioner stated that it was signed by every chief of any importance in Basutoland; that it was read in Council in the presence of all the important councillors of the tribe; and that there was no doubt that it represented the feeling of the entire Basuto people on the question of succession The Resident Commissioner added that after the reading of the letter, he adjourned the Council in order that the news of what had been decided by the chiefs might be communicated to the Basuto who, to the number of about 1,500, had collected near by; that the people had received the announcement with acclamation; and that he had informed the meeting that the proposal would be submitted to the High Commissioner for approval. In consequence, Letsie II assumed the office of Paramount Chief and held it until his death at Matsieng in 1913.

Information as to the events which immediately occurred on the death of Letsie II has been conveyed to the Court by the Witness Chief Jeremiah Moshesh, a man of 72, who was a son of Chief George Moshesh, who, in turn, was a son of a junior House of Moshesh, the first Paramount Chief. George Moshesh was invited, upon the death of Letsie II, to attend at Matsieng, the place of residence of the deceased, and he took his son, the present witness, with him. There, says the witness, a meeting of the sons of Moshesh took place, attended by all the principal chiefs of Basutoland, except those of the House of Molapo, who were late in arriving, and the question of the occupation of the Regency during the age incompetency of Letsie II's infant son was discussed. According to the witness, nothing was said about a meeting of the Sons of Letsie, and it will be remembered that the witness has no association with either of those Houses but is directly descended from the first Moshesh and is therefore a "Son of Moshesh." Mahadi, the senior widow

of Letsie II, was present but made no claim to the Regency, and the only candidate for the position of Regent was Griffith, the son of Lerotholi next to the deceased Letsie II. Griffith, however refused to accept the position of Regent and, no agreement being arrived at, it was resolved to resume consideration of the matter at a meeting to be held at Maseru. While this meeting at Maseru was in progress, information arrived that the infant son of Letsie had died, and the way to the paramount chieftainship seemed now clear for Griffith. Some objection to this proposal was raised by the Chief Jonathan on the ground that a son might still be born to Letsie II, but this, after discussion, was withdrawn. Griffith accepted the appointment, but subject to the condition that he would not *kenela* his brother Letsie II's widows.

On the 6th February, 1913, (which was probably just after the date of the Maseru meeting) a letter addressed from the Paramount Chief's office at Phahameng (which is adjacent to Matsieng) signed by the Chiefs Maama Letsie and Mojela Letsie "on behalf of the sons of Letsie and the Matsieng people" was sent to the Resident Commissioner, which read as follows:—

> "We sons of Letsie together with headmen and people of Matsieng held a meeting at Phahameng to consider what could be done seeing that the Paramount Chief is dead. We found it our duty to place someone to act the Paramount Chief, which we now do, until the sons of Moshesh and the Council and the Nation suggest to the Government and to the Nation, who, after consideration, will be Paramount Chief.
>
> For the present we nominate the Chief Griffith Lerotholi to be one to take the place of the Paramount Chief, and that he comes next in the chieftainship after the Paramount Chief Letsie II. Let the Government consider him as the one who is in the place of the Paramount Chief in all matter until he shall be introduced by the Chiefs and the Nation. We are sending the men of Letsie's ward together with our representative being the sons of Letsie, to bring this letter to the Government by which we are introducing the Chief Griffith that we look upon him as the successor of the late Chief Letsie II."

The acknowledgment and installation of Griffith as Paramount Chief duly followed.

As has already appeared in this judgment, Griffith's eldest son in years was the Plaintiff Bereng, who was born in 1902 of his third wife. His son next senior in years, born in 1905, was Seeiso Griffith who, being the son of 'Maseeiso, Griffith's second wife, was senior to Bereng in position, although this was questioned. The plaintiff was, however, Griffith's favourite son, and in or about 1927 Griffith introduced both sons to the High Commissioner and nominated Bereng, the plaintiff, as his successor to the Paramount Chieftainship. Immediate objection to this nomination was taken by Seeiso, in consequence of which a Court of the Sons of Moshesh was nominated by Griffith to determine the matter of his succession. This Court consisted of seventy Chiefs but, in the end, only thirty-three voted, of whom twenty-two supported Bereng and ten Seeiso. The High Commissioner was unwilling to accept this decision, announcing that, while the views of the Court nominated by Griffith would, of course, receive due weight, the eventual decision of the succession would lie with the nation; meantime he suggested a secret ballot, but this proposal was not accepted by Griffith.

This remained the position until Griffith's death in 1939, whereupon, on the 28th July of that year, a meeting of the Sons of Moshesh was convened by the Government for the 3rd August at the Council Chamber at Maseru, to discuss the question of the succession to the Paramount Chieftainship, and the District Commissioners were instructed to send messages to warn the Sons of Moshesh to be present. Full information of this meeting of the 3rd August, 1939, is not before the Court, but it is clear that the two candidates were in the field—Seeiso the alleged senior by degree of birth and Bereng the senior in years.

The decision was in favour of Seeiso. Presumably this decision was influenced by right of precedence, the principle closely followed by the Basuto in matter of succession and expressed in

Section 1 of the Lerotholi Code, which though already quoted may here be repeated:—

"The succession of chieftainship in Basutoland shall be by right of birth. That is the first born male of the first wife. If the first wife has no male issue, then the first born male of the next wife in succession shall be heir to the chieftainship. Be it known that this law of succession in Basutoland shall ever so continue and shall be supported by the Basutoland Council."

It is not necessary here to enquire whether, in coming to this decision, the meeting considered the question whether an alleged putting away by Griffith of 'Maseeiso, the mother of Seeiso, had resulted in 'Mabereng, the mother of Bereng, becoming her senior by House. In any event, that is not a matter in issue in the present case, nor is the evidence on the point such as to enable me to determine that question.

I have dwelt at this considerable length and in detail, so far as the evidence has disclosed it, with the procedure which accompanied the appointment of each of the successive Paramount Chiefs, for that procedure may become of importance in view of the present contention that, by reason of a failure to follow established precedent, the consequent nomination and appointment of the defendant were illegal.

It will be convenient at this point to set forth the procedure which it is claimed is essential and should have been adopted. It is, in effect, that on the death of a Paramount Chief, the immediate members of his family—in this case the six persons named in evidence by Chief Theko Makhaola as members of the House of the late Paramount Chief Lerotholi, the plaintiff as the senior, being convener—must foregather and agree amongst themselves as to the next in succession to the deceased. Having done this, they must call together the Sons of Letsie, who would be informed of the indication. Thereafter, the Sons of the Houses of Molapo, Masupha and Majara, the second, third and fourth sons of Moshesh, would, in turn, be called and informed of the indication; and, thereafter, the Resident Commissioner would be advised. The nomination would then without question be adopted by the High Commissioner, the nation would at some special gathering be told of it, and later the official installation of the nominee would be made. There is some variation amongst the witnesses as to these details, some not specifically mentioning the House of Lerotholi, but, in general, there is correspondence. The substance of the contention is that it lies with the immediate family of the deceased to point out his successor; that thereafter certain Houses and the Sons of Moshesh and, in turn, the Resident Commissioner, are to be informed; and that no variation of the original nomination by the deceased's family is competent under Basuto Law and Custom. It will be convenient to postpose a consideration of the validity of this contention until the procedure which was adopted in the present instance, and which is the subject of attacks has been examined.

Very shortly before the death of Paramount Chief Seeiso Griffith, he had instructed his principal councillor Chief Gabashane, a great-grandson of Masupha the third son of Moshesh's son of Masupha the third son of Moshesh's senior House, to carry on the duties of Paramount Chief during his, Seeiso's indisposition, and the Resident Commissioner was informed of this by messenger. On the death of Seeiso at Maseru some days later, Gabashane, being thus in charge, called a meeting to be held at that place of the Sons of Letsie, with a view to considering the question of the Regency during the minority of the heir. At this meeting objection was taken that the gathering should take place at Matsieng where the late Seeiso lived, and there appears also to have been dispute as to the method of convening the meeting and the list of those principal Chiefs invited to attend. Discord arose and it was decided to resume the proceedings at Matsieng. Here Gabashane appears to have taken certain further steps in consequence of the death, including the taking custody of the deceased's property. Plaintiff, as the senior male relative of the deceased, was upon the scene and objected to Gabashane's assumption of authority, complaining that services had been undertaken by the latter which rightfully fell upon him, Bereng;

and that, without his being consulted, the late Paramount Chief's motor cars were being used and his cattle slaughtered. He, further, objected to Gabashane having exercised the function, which plaintiff claimed belonged to him as senior member of the deceased's family, of calling together the Sons of Letsie. Presumably, had the matter been left to plaintiff, he would in the first instance have called together only the Sons of Lerotholi who it will be gathered later, from events connected with a meeting of the Sons of Moshesh held at Maseru on the 28th-30th January, 1941, might have indicated plaintiff as the rightful Regent and Acting Paramount Chief.

The proceedings were resumed at Matsieng on the 31st December, 1940, and there were present a great number of chiefs with their followers. Gabashane inquired for whom they were now to work, seeing that the Paramount Chief was dead. The meeting was sharply divided into two camps, some favouring the appointment of defendant as Regent and Acting Paramount Chief and some the selection of the plaintiff.. Feelings ran very high—to such an extent indeed that threats were uttered and resorts to violence and consequent serious disturbance of the public peace were apprehended. Some effort appears to have been made to separate out, from the assembled throng, those who were the Sons of Letsie, so that that body might separately express its view and that the objection raised by the plaintiff in this respect might be answered ; but amidst the confusion this appears to have been found impracticable, for though some of the Sons of Letsie moved aside they were followed by the throng insisting that the question was a national one in which they were entitled to take part. The meeting ended in disorder, and the leaders of each party decided to go to Maseru accompanied by their followers, and submit their respective cases to the Government authorities. It seems quite clear that at this stage this was the only practicable course which could have been adopted, for the matter was clearly incapable of peaceful decision whether by the Sons of Letsie or the Sons of Moshesh without authoritative Government direction.

It was, of course, open to the plaintiff, even at this stage, to call together the Sons of Lerotholi or the Sons of Letsie and obtain from them, if he could, the pointing out which he alleged should have taken place on the previous day or earlier ; and such a pointing out, though tardy, would presumably have had all the force of a timeous proceeding. From the fact that he did not do so may fairly be deduced the inference that the course was at this stage impracticable and that the assumption by the Government authorities of control of the situation was the only alternative.

On the 1st January, 1941, the morning next after the meeting at Matsieng, Gabashane waited with his supporters upon the then Government Secretary, Mr. How, before whom they placed their case. Immediately thereafter the plaintiff and his supporters had an interview with the Government Secretary, with a view to expounding their claims. Having heard both sides, Mr. How (who was in touch with the Resident Commissioner) then called both parties together and informed them that a meeting of the Sons of Moshesh for the determination of the question at issue would be convened, to be held on the 28th January, and that meantime the parties were to return, not together to Matsieng but to their respective homes. Mr. Kennan, who was present at these proceedings, states that both parties were in dangerous mood and that there was serious risk of public disturbance. On the 8th January, telegrams were sent to the District Commissioners requiring them to order the Sons of Moshesh to be in Maseru on Monday, 27th January, for the purpose of a gathering which would assemble on the following day where it would be considered what should be done for the furtherance of the paramountcy. Chief Gabashane was instructed to carry on in the meantime the duties of the position.

It will be convenient at this tage to consider the denotations of the terms " Sons of Lerotholi ", " Sons of Letsie " and " Sons of Moshesh ". The term " Sons of Lerotholi " denotes the surviving male adult members of that Paramount Chief's House, including his brothers. According to plaintiff, the Sons of Lerotholi may be ten or more in number, but Chief Theko Makhaola

specifically names six adult members. The term " Sons of Letsie " is deemed to include all the surviving male adult members of the House of Letsie I, which will include also the " Sons of Lerotholi " ; as already stated they may be some two hundred in number, but the plaintiff stated in evidence that some twenty of the principals would be sufficient to convey their opinion on any point. The " Sons of Moshesh " is a term which embraces not only all those male adults who are actually descended from Moshesh (which would, of course, include also the Sons of Lerotholi and the Sons of Letsie) but, by usage, includes certain two or three chiefs who are not physically so descended. Each of these three terms is regarded as embracing the principal councillors of chiefs included in the body.

On the 10th January, 1941, the plaintiff, through his solicitors, submitted to the High Commissioner a petition in which he set forth his claims to the office of Regent and Acting Paramount Chief; asked that the appointment of Gabashane to act be set aside and himself appointed in his place; and urged that an instruction be given for the Sons of Letsie alone to " point out " the person entitled to be appointed. In the alternative, he asked for a judicial inquiry into the justice of his claims, and that the meeting of the Sons of Moshesh called for the 28th January and any further action be postponed pending such an inquiry. The prayers of this petition were not conceded, but the petitioner was informed that his representation would be borne in mind in considering any recommendations put forward by the Basutoland authorities. On the 16th January 1941, in a personal letter to the District Commissioner of his district, Mohale's Hoek, plaintiff, referring to the proposed meeting of the Sons of Moshesh called for the 28th idem, wrote :—

> " I humbly request you please to change this your intention and according to precedents and customs of the Basuto will you kindly leave these affairs in my hands as the successor and the present head of the Sons of Letsie to arrange the matters with them after which we shall have arranged what is to be done, call all the Sons of Moshoeshoe and the nation and present before you our arrangement for the inheritance of the Basutoland Paramountcy. Chief, I make this request because I notice that to-day's procedure is very much against Laws, customs and our precedents."

The meeting of the Sons of Moshesh called for the 28th January was held at Maseru, was largely attended, and lasted for three days. A full report of the proceedings was taken in shorthand, and the record is an exhibit in this case. Mr. How, the Government Secretary, (who has since died) was appointed by the Resident Commissioner to be Chairman of the meeting, and there sat with him Mr. Kennan, the present Government Secretary, by whom there has been submitted an analysis headed " The way the Chiefs and Sons of Moshesh voted at the meeting in January, 1941, to elect Regent." As a matter of fact, there was no voting in the ordinary sense of the term, but the witness has taken the verbatim reported remarks of each of the speakers other than commoners, and in his return has indicated in whose favour that speech was, in cases of doubt giving the benefit to the plaintiff. Thus analysed forty-four speakers were for the appointment of the defendant 'Mantšebo, and twenty-three for the appointment of plaintiff, Bereng. In his verbal report to the Resident Commissioner made at the meeting immediately before its conclusion, Captain How stated, after summarising the general trend of the meeting, that he had no hesitation in saying (and in this, he added, Mr. Kennan agreed with him) that, in their opinion, the Basuto nation wished to present 'Mantšebo to sit in the seat of the Paramount Chief during the minority of the Heir. Mr. Kennan's evidence is entirely in accordance with this statement. In his written report to the Resident Commissioner of the 31st January, 1941, Mr. How comments on the position as follows :—

> " It is only possible to gauge the feeling of the people if the responsibility of the speakers is taken into consideration and this aspect is summarised in the report I made at the close of the meeting. It would however make the position clearer if the opinion of the various districts were indicated. Starting in the north

Butha Buthe favours 'Mantšebo (Chief Qhobela dissenting).: Leribe favours 'Mantšebo (Sub-Chief Setsomi dissenting): Berea district is unanimous in favour of 'Mantšebo and so is Maseru district; Mafeteng favours 'Mantšebo (Loto Letsie, Molise and three commoners with no following dissenting); Mohale's Hoek is divided, the people of Chief Mohale, Phakiso and Moiketsi favouring 'Mantšebo, those of Chief Bereng and part of Chief Goliath's ward favouring Bereng; Quthing favours 'Mantšebo; Qacha's Nek favours Bereng with the exception of Sekake's people who favour 'Mantšebo; Mokhotlong favours 'Mantšebo."

The Resident Commissioner in his letter of the 3rd February, 1941, forwarding Mr. How's report to the High Commissioner adds the comment that :—

". . . with the exception of Chief Theko Makhaola of Qacha's Nek and Chief Bereng himself all of the principal or District Chiefs supported Chieftainess 'Mantšebo. Considerable latitude was given to Chief Bereng's handful of supporters and of the thirty-one speakers in his favour twelve were his personal followers from Phamong and Mohale's Hoek, and three were shopkeepers and motor drivers. Strictly speaking these fifteen men had no right to address the meeting."

Apart from objections to the meeting of the 28th-30th January, 1941, based upon the absence of alleged necessary precedents, namely the pointing out of the successor by and to certain families (a matter to be dealt with later in this judgment), objection is now taken to the constitution of the meeting. It is not contended that the Sons of Moshesh were not present properly taking part, but it is argued that a considerable number of commoners and others not Sons of Moshesh were present, who should not have been admitted to the meeting, and that some of these were permitted to address the meeting. It is common practice in Basutoland for chiefs to be accompanied to public assemblies by their councillors and others of their followers, and there is no defined limitation as regards the right to speak. The presence of such persons does not the less make the assembly one of chiefs, although, of course, chiefs only have voting power. Similar considerations apply here; only the sense of the chieftain class was taken at the meeting, and the fact that others were present, a few of whom were permitted to take part in the deliberations, did not the less make the gathering a meeting of the Sons of Moshesh. It was stated by Mr. How in the course of his written report to the Resident Commissioner, of the 3rd February, 1941 :—

" All Chiefs of importance have either spoken in person or have deputed someone to speak on their behalf, and there is no doubt that what has been said in this building reflects the opinion of the country."

While on the subject of this meeting on the 28th-30th January, 1941, mention may be made of three incidental matters brought up for the plaintiff; firstly, it is said that the meeting was accompanied by considerable commotion within and particularly outside, and secondly that one of the speakers, Long 'Mabathoana was wrongly permitted to utter statements derogatory to the plaintiff. I cannot find that either of these two matters affected the validity of the meeting. While feeling ran high between the respective supporters of the two candidates in the field, there was no such disturbance as could affect the meeting, which Mr. Kennan says was extraordinarily well conducted; and I find it impossible to say that the reported remarks of Long 'Mabathoana, whose speech was stopped by the Chairman, were such as to nullify the proceedings. The third point concerned an attack upon the accuracy of the official shorthand record and transcript of the verbal report by Mr. How to the Resident Commissioner at the conclusion of the meeting. Plaintiff's counsel has not referred to this in argument, and he must therefore be presumed to have abandoned it. This was a wise course. I shall not, therefore, pursue the matter further than to say that after careful investigation I am fully convinced of the accuracy of the official report.

Later I shall examine the question whether the meeting of the 28th-30th January, 1941, and the associated events immediately preceding it, complied with any legal requirements which would be

necessary in the case of the nomination of a Paramount Chief, I proceed here to inquire whether the procedure for the appointment of a *Regent* and *Acting* Paramount Chief must be accompanied by such legal requirements. On the one hand, it may be said that here is no "succession of Chieftainship", within the literal meaning of those words in Section 1 of the Lerotholi Code, for a Regent and Acting Paramount Chief has, in truth, no predecessor or succcessor—he is carrying on the work of the office for a period, long or short as the case may be, pending the assumption of duty of the successor to the last preceding incumbent. And here it must again be noted that it has become a common practice for women to be appointed as Regents for their sons who, through age incompetency, are unable to take up their chiefdoms; if such an appointment be truly a succession, Section 1 of Lerotholi Code (which provides, *inter alia*, for male succession to chieftainships) has thus frequently tbeen disregarded. On the other hand, it is argued that where, as in the the present case, the Regent and Acting Paramount Chief will, in the ordinary course, hold office for a lengthy period—in the present case probably some fifteen years—the appointment is within the spirit of any rule which governs succession to and the tenure of chieftainship. As has previously appeared, it is contended for the plaintiff that every acting appointment, for however short a period, is a succession.

The holder of the office of Paramount Chief, has, on occasion, with the approval of the Resident Commissioner, appointed some one of his councillors to carry on his duties, as in the case of the appointment of Chief Gabashane by the late Paramount Chief Seeiso Griffith during his indisposition; but usually, and so far as the evidence enables me to judge I believe invariably, these acting appointments have been for brief periods. I am of opinion that a Regent and Acting Paramount Chief is not a successor within the meaning of any written or unwritten rule governing succession to Chieftaisnhip, and that, therefore, he may be appointed, without any restriction implied by Section 1 of the Lerotholi Code (even if that Section has the force of law) by the High Commissioner in pursuance of his authority under Part II of the Order-in-Council of the 2nd February, 1884, to take such measures and do all such matters and things as he may think expedient for the peace, order and good government of the Territory. Nevertheless I am disposed to the view that, in a case like the present, all legal forms and requisites necessary for the appointment of a Paramount Chief should, though not must, be followed in the case of the appointment of a Regent and Acting Paramount Chief for a lengthy period of years; and this view seems to be supported by the fact that, in the present case, the authorities did, as one might have expected, seek to comply with what they conceived to be such legal forms and requisites.

In the history of the Paramount Chieftainship of Basutoland there is little precedent for our guidance in the present situation, for the occasion has never arisen for the appointment of a regent. I must here, however, note that, as has appeared *supra*, when during the few days immediately succeeding the death of Letsie II the question of the filling of the regency and Acting Paramount Chieftainship during the age incompetency of the deceased's infant son was under discussion by the chiefs, the deceased's next senior brother Griffith was the only nominee for the position. It will be remembered that he was not prepared to accept anything but the full title, and that the death of the infant a few days later put an end to this situation, with the result that Griffith became Paramount Chief. At this time, Letsie II's senior widow Mahali was upon the scene, but she was not nominated to the position of Regent and Acting Paramount Chief during the age incompetency of her infant son, nor did she at all figure as a candidate for the position. Great reliance has for the plaintiff been placed upon this incident, for it is argued that here indeed is confirmation of what is claimed to be established custom under Section 1 of the Lerotholi Code and a clear disproof that in such a position the senior widow is competent or entitled to fill the position. Support is drawn for this contention from the evidenc of Chief Jeremiah Moshesh who stated, in reply to plaintiff's counsel, that if Griffith had accepted

the position of Regent and Acting Paramount Chief this would have been in accordance with Basuto Law and Custom, and that this position would have carried with it the custody of the child of the late Paramount Chief and the administration of his estate. Later, this witness, on being further questioned by Plaintiff's counsel as to whether, if Griffith had wished it, he could have been Regent, administrator of the estate and guardian of the minor heir, replied, " No, not when he wishes, but when his father wishes and when the Nation wishes it."

This incident, while clearly according with the rule set out in Section 1 of the Lerotholi Code, cannot in my opinion be accepted, as contended on behalf of plaintiff, as proving the illegality of the appointing in the present case of the senior widow as Regent and Acting Paramount Chief instead of the next person to the deceased in the male line. As I shall point out later in this judgment, the real essential precedent in these cases is that the High Commissioner should be assured that the nominee has the Nation's approval. If the subject of that approval is a person who falls without the rule of Section 1 of the Lerotholi Code, the decision is not illegal, for the Section neither embodies a custom which has the force of law, nor does it detract from the power of the High Commissioner under the Order-in-Council of 1884.

An important consideration arises out of the difference between the wording in the Proclamation No. 61 of 1938 as amended by Proclamation No. 35 of 1941, of the definition of " Paramount Chief " and that of the provision for the appointment of a Regent or Acting Paramount Chief. This Proclamation which, *inter alia*, provides for the duties and powers of the Paramount Chief and other chiefs, in Section 1 defines " Paramount Chief " as meaning " the Paramount Chief of Basutoland recognised as such by the High Commissioner." Section 2, which, *inter alia*, makes provision for a Regent or Acting Paramount Chief, reads as follows :—

> " 2. The person for the time being holding the office or rank of Paramount Chief of Basutoland is hereby vested with the powers of Paramount Chief as defined in this Proclamation: Provided that during any minority, illness, absence or incapacity of the Paramount Chief, or in the event of a vacancy in the office of Paramount Chief, such powers may and shall be exercised by such person as shall be recognised as Regent or as Acting Paramount Chief, as the case may be, by the High Commissioner."

The proviso to this section was added by Proclamation No. 35 of 1941 which was promulgated on the 6th June, 1941, but by Section 3 of the Proclamation it is enacted that the measure shall be deemed to have had force and effect as from the 1st day of January 1941. Reference might here also be made to the Basutoland General Interpretation Proclamation No. 12 of 1942, promulgated on the 20th March, 1942, which in Section 1 defines " Paramount Chief " as meaning the Paramount Chief of Basutoland recognised as such by the High Commissioner and includes any person so recognised as Regent or as Acting Paramount Chief."

While, therefore, " Paramount Chief " means the person who is the Paramount Chief of Basutoland (i.e., as I conceive it, the person who according to any practice governing the matter would, when the time for the grant of recognition arrives, be regarded as vested with the qualities of the position) provided that, in addition he becomes vested with the further qualification of recognition by the High Commissioner, the Regent or Acting Paramount Chief is " such person " as shall be recognised by the High Commissioner. This provision appears to me to indicate that unlike the case of the Paramount Chief, the Acting Paramount Chief who may be recognised as such by the High Commissioner, need not have any precedent claim or qualification as such. If this be the correct interpretation of these sections, it puts an end to the plaintiff's contentions as to the legal qualifications of the defendant to hold her present office.

But, in view of the course which the trial has taken, I desire also to consider this question on the basis of the assumption that the same legal forms and requisites must accompany a recognition of a Regent and Acting Paramount Chief as

are necessary in the case of a recognition of a Paramount Chief; and I proceed therefore to deal with the question of whether a failure to comply with the alleged rule that, before a Paramount Chief can be appointed, he must have been indicated in the course of a family ceremonial or series of such ceremonials, must invalidate an appointment made. I am satisfied that this rule is one usually followed; but I am equally satisfied that it constitutes nothing more than a rule of domestic etiquette, a failure to comply with which has no vital effect upon a subsequent apppointment. The contention that the first pointing out of his successor by the immediate family of the deceased is final and precludes the raising of any objection at any subsequent pointing out or proceeding, including the actual recognition by the High Commissioner, is one which must wholly be rejected. According to this contention, not even the High Commissioner may raise his voice against the decision of the deceased's family. This is wholly in discord with the provisions of Sections 1 and 2 of Proclamation No. 61 of 1938, as amended by Proclamation No. 35 of 1941, the relevant portions of which have been set out *supra*. The provision therein contained for official recognition must carry with it some power of approval or disapproval in the High Commissioner, and, in my opinion, it would be impossible to hold that, however unsuitable a nominee he might be who was put forward with the qualifications of due family nomination and full compliance with Section 1 of the Lerotholi Code, the High Commissioner was precluded from giving effect to his objection.

It will have been gathered, from my examination *supra* of the procedure which was followed on the appointment of various Paramount Chiefs, that in no case was attention directed to the question of compliance with any rule of domestic etiquette for the pointing out of the successor of the deceased, but that what was insisted upon was that the High Commissioner should be assured, through the statements of the leading Chiefs of the nation, that the nominee had the nation's approval. It was the satisfaction of this requirement which was insisted upon in the present case; it is the satisfaction of this requirement which, in my opinion, clothes a person with the qualification of Paramount Chief in terms of Section 1 of Proclamation No. 61 of 1938 so that he becomes eligible for the High Commissioner's recognition. The gathering together of the sons of Moshesh, which included all the leading chiefs of the nation, was in the present case deemed, and in my opinion rightly so, as the constitutional means of determining this important question of the national will. Ample notice was given of this gathering; every person concerned was informed; and, in the event, the meeting of the 28th-30th January, fully conveyed, through the leading chiefs of the nation, to the High Commissioner the nation's will that the office of Regent and Acting Paramount Chief should fall upon the defendant and not the plaintiff. In view of the difficulty which might be felt as to the definition of "Paramount Chief" in Section 1 of Proclamation No. 61 of 1938, it may be of interest to note that the author of the official Explanatory Note which accompanied the Proclamation on its promulgation stated in a note to Section 1, "The Paramount Chief acquires his authority by virtue of the fact that he is nominated by the Basuto according to custom and the nomination is accepted by the High Commissioner." This dictum can, of itself, carry no authority but is of interest as a view held by an official concerned with the administration of the statute. See *Dinkels vs. Union Government*. 1921, A.D. p. 165.

I find, therefore, that in the procedure which has been followed all legal requirements essential in the case of an appointment to the Paramount Chieftainship have been fully complied with, and that the recognition of the defendant is legally unassailable. As already indicated, although there is no precedent for the appointment as Regent of the senior widow of a Paramount Chief, there have been many cases in which the senior widows of chiefs have been appointed to vacant Chieftainships as Regents for their minor sons.

THE POWERS OF THE HIGH COMMISSIONER

Up to the present, I have dealt with this matter upon the basis of it being determinable by reference

mainly to precedent, custom and the relative proclamations. But there is another aspect which demands attention. The Constitution of the Territory is found in Part II of the Order-in-Council of the 2nd February, 1884, which, in the second paragraph, empowers and requires the High Commissioner "in the name and on behalf of Her Majesty to make by proclamation such laws as may to him appear necessary for the peace, order and good government of the said Territory, and to appoint such Resident or Deputy or Assistant Commissioners, Officers and Magistrates, and generally to take such measures, and to do all such matters and things as he may think expedient for the like peace, order and good government."

A comparison of this Order-in-Council with that of the 9th May, 1891, relating to the Bechuanaland Protectorate shows that the latter recognise that the Crown's jurisdiction in the Protectorate may be limited by Treaty or otherwise, and that the High Commissioner, in the exercise of the powers conferred upon him, is directed to respect Native Laws and Customs except in so far as the same are incompatible with the due exercise of His Majesty's power and jurisdiction. See *Tshekedi Khama and another v.s. the High Commissioner*, 1936 Special Court of Bechuanaland Protectorate. But the Basutoland Order-in-Council contains no such limitation; and it appears to me to place in the hands of the High Commissioner an executive power for the recognition of a person as a Regent and Acting Paramount Chief unrestricted by any limitation which might be imported into it by the adoption of any Basutoland practice, and qualified only by the relative legislation—Sections 1 and 2 of Proclamation No. 61 of 1938 as amended by Proclamation No. 35 of 1941. The High Commissioner in the exercise of his authority in this respect will, in the future as in the past, no doubt extend all due consideration to any national practice touching the situation and in particular he will be largely guided by the will of the Nation as expressed through its principal Chiefs; but, in the strict legal position, it appears to me that he is bound by no such limitation.

Had Section 1 of the Lerotholi Code been a written law or expressed a well-established custom having the force of law, the question might have arisen whether the wide provisions of the Order-in-Council carried with it an implication of its repeal. I may say that I would find it difficult to answer this otherwise than affirmatively, for a situation might easily arise in which the carrying out of the provision of Section 1 of the Lerotholi code would be quite repugnant to and inconsistent with a due exercise by the High Commissioner of the duty imposed upon him by the Order-in-Council to take such measures and to do all such matters and things as he may think expedient for the peace, order and good government of the Territory. See, as to implied repeal, *Transvaal Investment Co., Ltd., vs. Springs Municipality*, 1922, A.D. p. 347.

Nor does the law to be administered by this Court permit of interference with any such decision of the High Commissioner, save, of course, in the event of any essential legal prerequisite or accompaniment having been absent. In Section 12 of Proclamation No. 1 of 1884, issued in consequence of the Order-in-Council of the 2nd February of that year, it is enacted that in all suits, actions and proceedings, civil and criminal, the law to be administered in Basutoland shall as nearly as the circumstances of the country will permit be the same as the law then in force in the Colony of the Cape of Good Hope, provided that in any such action or proceedings in any court in which all the parties are Natives, and in all suits, actions or proceedings whatsoever before any Native chief exercising lawful jurisdiction, Native Law may be administered. This provision has no application where there has been an exercise by the High Commissioner of executive authority under the powers conferred by Part II of the Order-in-Council.

The claims of the plaintiff fail, and judgment is entered for the defendant with costs.

AFRICAN MUSIC: THE MGANDA DANCE

A. M. JONES

I. THE DANCE

The Mganda Dance so far as I know, belongs to East and Central Africa, and it is the Northern Rhodesian version which we are considering. The dance has a peculiar interest, for while it is thoroughly African, it is comparatively modern: it is in fact based on European military procedure and it shows what the African will do when he takes over something he has seen and makes it really his own.

As far as I can find out—though more information on this point would be welcome—it took its rise in East Africa during the Great War, 1914-1918, and was brought to Northern Rhodesia by the Tonga tribe (Nyasaland). It became popular on the Copperbelt and down the railway line, and has continued to be performed on big occasions like Christmas. During the passage of years it has spread to the villages round Fort Jameson where it has undergone certain important modifications. However, to start with, it would be well to describe the original form of the dance.

The Mganda Dance is a ceremonial dance, and is frankly a burlesque of a military parade: in its full form I understand that it lasts from mid-day to sunset. It has two distinct parts: the Procession, and the Dancing *in situ*.

The Procession

First may come the Regimental Mascot. When I saw it, this was carried on a cushion very sedately by a small boy. The mascot itself was one of those bronzed heads used as an advertisement, I believe, of Van Heusen collars, surmounted by an ordinary trilby hat.

Then come the Officers dressed in European suitings, very smart, and brandishing canes in a cavalier manner. They dance about four abreast and burlesque with extravagant airs the British Army Officer—doing it of course in dance form and keeping time with the music.

Next come the Drummers, three in number. In the centre is the big drum carried in the European manner and beaten by two sticks with the rather pompous display exhibited by a European big drummer. The drummer sounds as if he is beating an ordinary military march, but what he is actually doing will be described later. He is accompanied by two other drummers beating on African drums of the familiar pounding-mortar type.

Behind these is a body of Trumpeters. They sing into calabashes transversely three inches from the narrow end, through a hole about five-eighths of an inch square. The narrow end of the calabash is cut off and a piece of spiders' egg covering—a white, opaque, and tough material—is stuck over the end to make a buzzing sound. The bulb of the calabash is sliced off so as to make a bell-shaped end to the instrument. The Trumpeters sing the tune of the song into the calabashes, making a sound extraordinarily like real trumpets, or they may cease trumpeting and sing the song with words in the ordinary way.

One man acts as the Doctor. He has a red cross on his back and a medicine box fixed on the left side of his belt. During the Procession he walks freely about with the dignity required of an M.O., and will attend any "casualty" that occurs. There is also a party of Stretcher-bearers with a stretcher. When the Procession reaches its destination, they stand aside on duty. From time to time one of the dancers pretends to be a casualty and is suitably tended by the medical party.

Accompanying the Procession is a Constable. He is an important person whose duty it is to see that everyone dances properly and that there are no squabbles. He is free to walk where he likes and is recognisable by a large sword made of wood which he carries.

The Procession starts perhaps half a mile from

the "Headquarters" where the dance *in situ* is to take place.

The Dance in situ.

At the Headquarters—an open space where both dancers and spectators have plenty of room, are two very important people. They are the King and his Secretary. The King is in supreme command of the whole show and gives orders from time to time, changing the dancing or announcing an interval for food, and so on. Both the King and his Secretary are seated at a Table.

Arrived at Headquarters, the Procession stops and waits for the King to make a speech. He will probably say, *inter alia*, that "this dance will go on from now (usually about 11 a.m.) till six o'clock." Now the dance proper starts. It is a circular dance with the drums in the centre, and is for men only. The big drum is slung on a stout pole fixed vertically in the ground, and is beaten with sticks. The two small drums are near by, on the ground, and are beaten with hands in the usual African manner. It is only the performers, who dance: contrary to usual custom the spectators do not take part.

There are occasional intervals proclaimed by the King for rest, food, etc. On resuming the dance, the song is changed. There are said to be more than six, possibly more than a dozen songs for Mganda but all the songs are sung to the identical drumming.

One important interval is made for financial reasons. The King may announce, "Everyone must put a shilling for men, sixpence for women." This notice refers to the dancers and not the spectators. It means that every dancer has to come out and pay to the Secretary 1s. if single, or 1s. 6d. if married. The money is kept for travelling expenses, as the Mganda dancers may have to give a show at some other place. Spectators may subscribe, but they are not definitely asked.

In the case of the Copperbelt in Northern Rhodesia, where many tribes are represented, the Mganda dance may take the form of a competition, there being separate Tonga, Henga, and Likoma Mganda teams. If this happens, each team has a separate procession, drums and dances, in fact, a separate show. Each team will have its own King, Secretary, etc. The Kings will all sit together and one King is chosen by the competing teams as supreme arbiter. The dancing *in situ* is arranged in rotation, the retiring team going outside the ring of spectators to practise its next "turn."

When the allotted time for the Mganda has expired, the King stops the dance, and makes a winding-up speech, praising the dancers and bringing all to a happy conclusion.

Any reader who happens to be an English Morris Dancer will by this time be reflecting on the rather striking parallels which exist between this Mganda with its "set" of dancers, its supernumeraries, its procession, and its stationary dances, and a Morris tradition like that of Abingdon (Berks.) where, Cecil Sharp says, the complete party included besides the set of six dancers, a Horn-bearer, a Mayor, a Ragman, a fiddler, a Fool, a Cake-bearer, and a Moll or a King and Queen.

The details for this account were supplied by one of my old boys, Teacher Joseph Milonga, while he was staying here recently. He is headmaster of Kitwe African School on the Copperbelt and has seen these dances for many years. The writer has seen Mganda a number of times during the past eight years, but it has always been done by his pupils and has been modified according to the talent available.

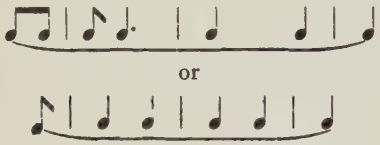
The Mganda tradition has spread to the villages in the Fort Jameson area, and in being adopted for village use it has been modified and simplified. They retain the Trumpeters and three drums. They have the same set dances and the same drumming and dance steps, though they only do a small part of the sum total of dance steps belonging to the full Mganda. The songs are sometimes different. The Procession, as far as I can tell, is so attenuated as to be merely a token one. In short, the villagers have transformed this cere monial performance almost into an ordinary village dance.

This description is merely by way of introduction, for the purpose of this article is to show and

discuss some of the music for Mganda, to which we now turn.

II. THE MUSIC

If the reader were to listen to a Mganda Dance he would hear something which sounds like a clever imitation of a military band, together with a song. There is a martial air about the music which sounds, on first hearing, more European than African. The main drum booming on a low note carries the main rhythm which is mostly either :—

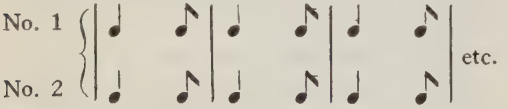


or

at a speed of $\mathbf{\mathit{d}} =$ about 110, in fact a typical marching rhythm. Little would he realise what incredible things are actually taking place in the build-up of the ensemble.

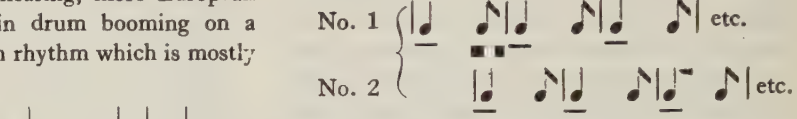
In order to understand these mysteries, we had better first consider the essential facts about African drumming and rhythm.

Let us imagine two European drummers both beating :—

If they are asked to play simultaneously, they will obviously play :—

that is to say, the main beats (first beat of the bar) of both drums will coincide.

Now this is the last thing an African would think of doing, in fact, he just could not bring himself to do it at all. For though to us this is the obvious way of combining these two rhythms, it is not the only way. There is another : for is it really imperative to make the main beats of the two drums coincide ? Certainly not. There are two other ways : we may make the main beat of No. 2 drum fall on the *second* beat of the bar of No. 1 drum, or again we may make his main beat fall on the *third* beat of the bar of No. 1 drum.

It is the latter custom which is usually adopted by the African. He would never dream of making the main beats coincide : if he did so by accident he would know he was wrong. So the absolute fundamental of African Rhythm is *crossing the main beats*. If then, the two rhythms given above were played by Africans they would combine them thus :—



No one can understand African Drumming till he has grasped this fundamental principle of crossing the main beats, and the musical reader would be well advised, before he reads further, to pause and master this example. Beat No. 1 drum with the left hand on the table and beat No. 2 drum with the right hand on something which gives a contrasting sound, say an attache case. Start by beating the left hand only, slowly : bring in the right hand on the short beat of the left hand. When you have got the feel of it, increase the till you are going at $\mathbf{\mathit{d}}. = 140$. You will then be treading the threshold of the inner shrine of African music. How un-Western it feels, but how exhilarating ! You can fix your attention at will either on the main beat of No. 2 drum or on that of No. 1 drum : this gives you two ways of looking at the same rhythm, and further, the resultant rhythm which emerges from the combined beating of the drums seems to change in character according to the particular main beat on which you fix your attention.

Turning now to the Mganda music, we find that it is divided into two sections. The first, called *Sefa* is an Introduction or Interlude and is played before and in between the song—in fact at any time when the song is not being sung : the second is the music for the Song and Dance. During the Interlude the dancers walk round quietly : during the second section they galvanise into vigorous dancing. In passing it should be said that we are considering the music for the dance *in situ*, and have not included the music for the Procession.

We notice that the ensemble consists of three drums, the first called *Nzupe-nzupe*: the second, *Cibitiku*: and the big drum, *Kambape*. *Nzupe-nzupe* and *Cibitiku* have a skin at one end only and are beaten by the hands: *Kambape* is like a military big drum. It should be made of wood with a skin on both sides and is beaten with two sticks. The *Kambape* I saw was made of a section of a 44-gallon drum with skins stretched over the ends, and cross laced with thongs round the sides of the drum.

Sefa.

The drumming is always started in this order: *Nzupe-nzupe* first: then *Cibitiku:* when these have settled down *Kambape* comes in.

Nzupe-nzupe beats

continuously. Note the hands used (R=right, and L=left). I am told that if the rhythm is beaten with the opposite hands it sounds wrong. The name *Nzupe-nzupe* refers to the sound of the beating it makes in this dance i.e. nzuPe, nzuPE, etc.

Cibitiku beats this continuously

etc.

The drum is so named in this dance because of the sound it makes: i.e. BI-ti-ku, BI-ti-ku, BI-ti-ku, etc.

When *Cibitiku* beats together with *Nzupe-nzupe*, his main beat (1st beat of each bar) is the *third* beat of *Nzupe-nzupe's* bar. Thus the beating when combined goes like this:—

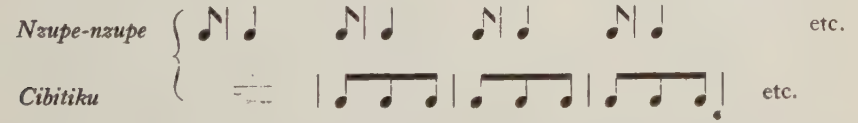
etc.

It is rapid, ♩. being about 140 to the minute.

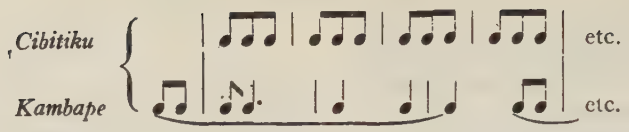
Now let us look at *Kambape's* beating, (see A on Full Score). In *Sefa* he beats:—

What may we observe here? First, it is duple time. Second, the complete phrase consists of 12 quavers. Now 12 is the L.C.M. of 3 and 4: it is also 2 x 6. The importance of this Arithmetic will appear later. Meanwhile it must be stated that a phrase in African music consists of either 4 units or 6 units, or a multiple of these. This subject should properly be discussed in considering Handclapping, which marks the phrases in African music, but we mention it in order to account for the fact that *Kambape's* phrase consists of 2 quavers or 6 crotchets. Third, we notice there are 8 of these complete phrases before the change at the point marked C on the score: and 8 is a multiple of 4.

Very well then; how does *Kambape* insert his rhythm into the foundation-rhythm? The latter is Triple and *Kambape's* is Duple, but very emphatically we say that he does not beat "two-against three." His time, quaver for quaver, is exactly the same as that of the other drums. What he does is this: he makes the main beat of his *phrase* (sc. not *bar*), that is, his third quaver from the beginning, coincide with one of the second drum's main beats. Now as *Kambape* is duple and *Cibitiku* is triple, this means that the remaining beats of *Kambape's* phrase are "crossed" with



This is the "foundation-rhythm" and goes on continuously. It is Triple and the resultant sound produced by them both is obviously:—

the main beats of *Cibitiku*. This is where the L.C.M. of 4 and 3 comes in. The two drums fit together thus:—

Now *Kambape* being the big drum, his rhythm is paramount when all the drums are going, and so out of this mixture of triple and duple time there emerges a resultant rhythm, i.e. that which you hear if you stand at a distance, which is exactly like a military march rhythm. But the marvel is that this wonderfully clever imitation is achieved by reproducing a European-sounding rhythm by the employment of African technique, which as we have seen, is fundamentally different in conception. A band-master can beat time to a military band and keep all the instruments in time: no bandmaster could beat time for *Sefa* for his beating would only coincide with one out of the three drums. One wonders what a military band would say if they were asked to lead the regiment by playing *Sefa :* yet *Sefa* as played by the African is just as precise as the playing of a good European military band, and eminently suited to marching. Why should not the African Regiments try some Mganda music when on the march ?

Before leaving *Sefa* we note that it is repeated over and over again till such time as the signal is given for the Song.

The reader is now in a position to scan the complete music of *Sefa* as given in the Full Score.

This is again a duple rhythm with a total of 12 quavers to the phrase but note most particularly the hands used for the notes : we shall refer to this later.

In the middle of the song, when the Chorus sings " *Ee-ya* " (see C on score) *Kambape* changes his rhythm to the pattern

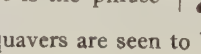
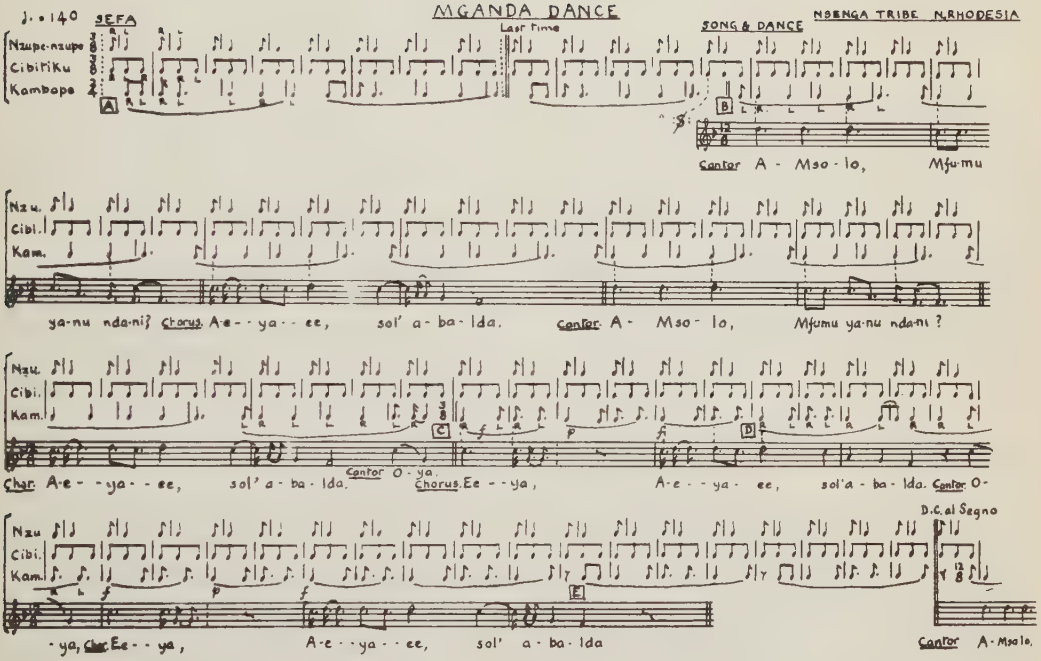
The first time there are 3 of these phrases each of which consists of 6 quavers or repeating the " sentence " there are 4 of them, each with 6 quavers : note the fundamental importance of 4 and 6 and their multiples in African phrasing. Now in the Full Score we are bound to mark this rhythm in 3/8 time owing to the length of its constituent notes in relation to the other drums. But it does not sound triple when played : it sounds duple like all the rest of *Kambape's* beating. To show what it really sounds like, here it is in duple time : the reader will observe that this version is almost identical in time value with that given in the Full Score.

The Song and Dance.

At appropriate times perhaps by the blowing of a whistle, the M.C. of the dance will give warning of the change from *Sefa* to the *Song and Dance.* Let us consider what happens.

Nzupe-nzupe and *Cibitiku* present no problem : they carry on just as before.

Kambape. On the last round of *Sefa* before changing to the song, *Kambape* lengthens his beat from a crotchet to a dotted-crotchet. He then embarks on a new rhythm (see B on Full Score), namely

The unwary critic may jump on this point and say, " Ha ! the choice of the 3/8 time in the Full Score is mere caprice on the author's part : it is a figment of fantasy." But he would be riding for a fall. The ultimate arbiter in this matter is the electric recorder which we use, and there, marked on a paper strip are all the beats of the drums. They can be compared and counted, and plain for anyone to see is the phrase  two dotted quavers are seen to be played against

MGANDA DANCE
NDENGA TRIBE N.RHODESIA
♩. = 140
SEFA
Last Time
SONG & DANCE
Nzupe-nzupe
Cibitiku
Kambopo
Confor A - Mso - lo, Mfu-mu
ya-nu nda-ni? Chorus A-e - - ya - - ee, sol' a - ba - lda. Confor A - Mso - lo, Mfumu ya-nu nda-ni ?
Char. A-e - - ya - - ee, sol' a - ba - lda. Confor O - ya. Chorus. Ee - - ya, A-e - - ya - ee, sol'a - ba - lda. Confor O -
D.C. al Segno
- ya, Char. Ee - - ya, A-e - - ya - - ee, sol' a - ba - lda Confor A - Mso lo,

3 quavers of *Cibitiku's* drum. The evidence is water-tight.

When the Song is over and before it repeats, *Kambape* changes his rhythm for a little Interlude (see E on Full Score). Again it is duple in sound but has to be represented as a phrase of 12 quavers in 3/8 time repeated twice: that is, 4 bars plus 4 bars: note again the number 4 in the phrasing.

Let us do as we did before and write it out in duple time to show in an easier form what it sounds like, noting again that duple form is almost identical in time value with the correct version.

After this, *Kambape* reverts to the rhythm for the beginning of the song again. This whole section of Song and Interlude is repeated over and over again till a change is called for.

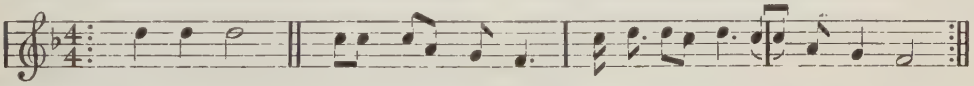
To sum up so far: we have two drums both beating triple time but their main beats are crossed: and we have a third beating various rhythms in duple time across the former. There are thus three drums all of which cross their main beats. This is the typical African method of ensemble and it always occurs in drumming. It is in fact rhythmic harmony in contradistinction with our European tonal harmonies.

The Song. A literal translation of the words is:

You Msoro boy, who is your Chief?
Fal-la-la, sorry, you student!
Fal-la-la, fal-la-la-de-la,
Sorry, you student!

Like most African songs there is much more to it than these few words would lead one to think. My African informers say that it really means this:—

"There came to a certain village a foreigner. He found one of the students from Msoro school and asked him the name of his Paramount Chief. Shame to say, the student did not know, so the foreigner, duly shocked that the student did not know the answer to such a simple question, went to Msoro to find out who the Paramount Chief was. Having been told, he returned to the student and said "Sorry," to that student who did not even know who was his Paramount Chief."

On the Full Score the Song appears to be in a very complicated time. It does not sound at all complicated when it is being sung. The 12/8 time-signature is necessary for the purposes of strict scientific accuracy, but it does make the time difficult to read. If the song were sung without the drumming by which to check it, the transcriber would certainly write it in common time, for it is duple in structure. To aid the reader in "getting the feel" of the song, here is the approximate rendering of the first part of it in common time, but he should remember that it is an approximation and the exact time is that given on the score.

It is a rollicking tune with a splendid antiphony between Cantor and Chorus. They sing it *legato*, and no one hearing the singing would guess with what meticulous accuracy they are making it agree with the beats of the drumming. How then, do we know its exact time? The answer to this question leads to an additional and truly remarkably discovery. On enquiry, the singers will say that certain syllables have to fall exactly on certain beats of *Kambape*. They fit in the others according to the rhythm of the song (see especially "*Sol'abalda*"). On the Full Score I have marked these leading syllables by drawing a dotted line from the *Kambape* beats in question down to the notes to which these syllables are sung. Now if we count the quavers of *Cibitiku* between these marked syllables we shall see that we are forced to write the song in 12/8 time.

But the discovery we also make is this. The leading syllables all fall on beats of *Kambape* for which he uses his *right* hand. This gives us a clue to the way in which the singers find their way through this blaze of drumming, but it does more. For we notice in Section A of *Kambape*, that his right hand is used twice in a phrase of 6 crotchets, i.e., on the first and fourth beats. Now as the singers single out these particular beats on which to hang their song it is clear that they are conceiving this duple phrase of a series of groups of 2 crotchets, as a triple timed phrase consisting of groups of 3 crotchets. We further notice that to these groups of 3 crotchets in *Kambape*, the singers sing 2 dotted crotchets or their equivalent. So they are singing "two-against-three" which is a common African custom. This really is very simple, though it looks complicated on the score.

We have seen already that *Kambape* changes his rhythm in the middle of the song at C on the Score. The reason is that this is the climax of the Chorus. Everybody sings very loudly and with great gusto the words, "*A-e-ya-ee, sol'abalda* So to mark the occasion *Kambape* beats a main beat on each syllable of the refrain "*Ee-ya : Ae-ya-ee*" : but he makes a very effective reiteration of his rhythm, played *piano*, in between the two words.

Reviewing the combination of the song with *Kambape*, we must notice these points :—

Kambape is duple.

The Song is duple.

The Song treats *Kambape* as though it were triple and sings two against *Kambape's* three.

So altogether we have two duple rhythms going together, but one (i.e. the song) is sung slightly slower than the other.

Summing up the rhythmic structure of the whole piece we find that we have :—

1. One drum in triple time.
2. Another drum in triple time whose main beats cross the first drum.
3. The big drum in duple time whose beats cross the first two and whose rhythmic patter changes from time to time.
4. The song in a duple time which is slower than that of the big drum, playing two against three of the latter. So the main beats of the song cross the main beats of the first and also the big drum but coincide for the most part but not entirely, with the main beats of the second drum.

We have then four different rhythmic patterns intertwined, each having main beats which cross with the others. This intertwining of rhythm is to the African what the intertwining of harmony is to the European. Each drum and the song are in strict relation with each other and yet, as it were, mutually independent, going on their own ways and preserving an individual freedom. This freedom of the individual is absolutely inherent in the very notion of African life and more particularly of African dancing and African music. Africans do not take kindly to any regimentation in dancing which would compel everyone to do the same thing at the same time. The freedom of the individual to act on his own inspiration is to the African a fundamental concept which exists side by side with his bondage to solidarity. So we see in this Mganda the subtle combination of individuality within co-operation, everyone having his own rhythm different from the others yet controlled into one fine ensemble.

We may compare this rhythmic harmony with its freedom within limits to European polyphony where the voices preserve a sturdy independence but are yet constrained to the mutual interplay which builds up the music into a unified whole. But what a novel technique does the African use ! It is novel only to us Europeans as we have never hit on the idea of crossing main beats in our music for when we combine two essentially different rhythms such as a duple and a triple rhythm in "two-against-three" we still insist that their main beats should coincide. Now there is nothing inherent in the nature of music which should compel us to do this, and I suggest that European music has still an entirely new field to explore. What sort of grand music shall we produce when we gather to ourselves this distinctive contribution of the African and write music with crossed main beats ? Or perhaps better still what music will the African musician trained in European ways and technique produce when he

hitches this ample waggon to his very own scintillating rhythmic star? But this is looking rather far ahead, for to be practical, it has to be admitted that the crossing of main beats is so entirely foreign to our way of thinking that it is very difficult for a European to do it at all: and one respects with awe the naive freedom with which the African, even when a child, can make play with his rhythms, crossing the main beats, dropping at will from triple to duple time, playing 4 against 3, in fact being completely at home in a field almost denied to us through our having never stumbled on the gateway which leads to it.

The writer claims that the transcription of the Full Score is essentially accurate. The only points in which there is any question are the entering syllables which precede a main beat in the song, to wit, "*Sol'abalda*" and the Cantor's "*Oya*". But we have already seen that the African has a certain latitude here as his aim is to fit the *leading* syllables to the correct beat of the drums.

Now the reader, on the other hand, may have observed that this drumming is very fast—420 quavers to the minute, or 7 quavers per second. He may therefore legitimately ask, "How can you be so sure about the position of every quaver in a piece which goes at such a speed that it is humanly impossible to observe by the ear the incidence of any separate beat in its relation to the others?" This is fair criticism, the answer to which may serve to reveal to the musical enthusiast how to set about capturing this elusive African music in a scientific manner. We must stress the word "scientific" for any transcription of African music which cannot stand the test of objective examination by an independent investigator is worthless for purposes of research. Thus it is no use whatever to listen and then to write down what you *think* the African sang or did. The transcriber must find ways and means of *proving* that he is right.

Transcribing African music is for all the world like the detection of crime. Not that music is criminal, but that every conceivable obstacle lies between the investigator and the truth, and further, that the perpetrator or performer is always either dumb or misleading when asked to say what he was doing, and practically always entirely unable to give any rational explanation of his actions. It is thus into the dark and inscrutable unknown that the transcriber has to force a way with no direct help from any one of the parties concerned.

For successful transcription one needs besides musical ability with a strong sense of rhythm three special qualities: an interest in science, a little mathematical ability all infused with a species of low cunning which by devious paths and ingenious ways seeks to check and recheck every step in the transcription and to prove beyond doubt that the music is in fact as the transcriber has written it and cannot be anything else. For transcribing drumming some sort of recorder is essential: but it must emphatically not be of the gramophone type. The writer has a machine which records drumming on a strip of paper, showing which hand is used by the drummers for each beat, the rhythmic pattern of each drum and the way the main beats are crossed. It also shows the incidence of the main syllables of the song. This sounds complicated but it is not: it is made of old cigarette tins, propelling-pencil leads, spring wire, electro-magnets and a car battery.

The procedure for making a good transcription is roughly this. Each performer is asked separately to beat his drum, and the rhythm is written down "by ear": and similarly the song. The first two drums are asked to play simultaneously, and the experienced transcriber may be able to spot how the main beats are crossed; but on the other hand he may not. If he can spot it he makes a note of it. The third drum is asked to play first alone with No. 1 drum, and then alone with No. 2 drum, to try and find out from which drum's main beats he takes his cue. Similarly with the song: we try to get as many clues as we can. So far, then, we have a rough idea of what is happening but it is a subjective idea, probably wrong in a good many places, and needs objective proof.

We now record on our strip of paper the whole piece going full tilt, song and all. Armed with this invaluable piece of paper we can at our leisure

check our preliminary idea of what each person is doing. We can see what they do in relation to one another. We can, as a final check, count the complete number of quavers in the entire piece and then count the quavers in the constituent parts of our transcription and see if they add up right, and so on. We can, if in doubt—for the recorded strip may have blemishes where one performer perhaps was not making good contacts—recall the players and try and "shake" them by trying to force them to agree that they were playing something which we are almost certain they did not play: if they stubbornly refuse, we have the confirmation we needed: and so on. There is practically no limit to the ingenuities which low cunning can devise to make sure that we have kept track of every quaver and every syllable.

This then is the sort of thing we must expect to have to do if we are to make a scientific and trustworthy transcription. It is no use approaching African music with a soulful eye in the "so-very-musical-you-know-my-dear" manner. The sort of eye you need is one which has a cold and calculating glint in it, an eye which pierces to the heart of things and will not be put off by a second best. For nothing less than a really trustworthy transcription is good enough for those who have sensed the genius of African music and who wish to explore its mysteries. The conscientious musician reaps a rich reward: for to him is gradually vouchsafed the vista of an unknown world of musical treasure, of which surely, this Mganda Dance we have analysed, this closely knit, subtle rhythmed, well balanced and homogeneous piece is a delightful and musicianly example.

Note. *The writer has recently made a number of Gramophone records of African music for the B.B.C., and among the examples is this Mganda Dance played by some of his African pupils. He understands that the B.B.C. may possibly put copies of these records on sale later on. Any inquiries should be made direct to the British Broadcasting Corporation, London.*

The Cantor he used for this recording has a tendency to start singing the song crotchets late, i.e., on the second of Kambape's main right-hand beats. When he sang for the recording in this article he was rebuked and corrected by his friends. In the excitement of recording for the B.B.C. the writer did not notice what he was doing. If he started 3 crotchets late, we prophesy that Kambape corrected the mistake just before the entry of the Chorus at C, by curtailing the preceding phrase. This starting on what we should call the wrong beat, while not permissible in this particular piece, is a rather baffling custom in which the African frequently indulges.

THE INDICATIVE MOOD AND ITS CLASSIFICATION IN SOUTHERN BANTU

E. WESTPHAL

The predicate has been the stepchild of comparative Bantu and the main reason for this seems to be the inadequate terminology employed. It is hoped that the analysis made here, which seems to apply to the Southern Bantu languages (of which Venda, Sotho and Zulu are studied), may suggest a basis for the comparative study of the predicate. The present analysis is intended to indicate the distinctions made without analysing the formal means employed in any detail. Formally there are no very great differences between the Southern Bantu languages as far as the predicate is concerned, but here, too, much is still unknown. For example, the Southern Bantu languages usually have an initial concord. After this concord follow all the tense, mood and negative formatives. In Herero, on the other hand, formatives very frequently precede the concord, for example, *mamunu* (I see), *memunu* (you see), *momunu* (he sees) which all begin with the formative *ma-*. But in Zulu: *ngiyaβona* (I see), *uyaβona* (you see), *u'yaβona* (he sees) where the formative *-ya-* follows the concord.

The analysis suggested here may also simplify the study of the predicate for any particular language, and this has obvious advantages in teaching Bantu languages, especially since the classifications employed at present leave the student with an incomplete picture of the facts.

Three basic tenses may be distinguished in the Indicative Mood, viz., Present, Past and Future. To these three tenses may be added the Narrative tense and the Future with *-ya-*:

Zulu:

ngihambile, ngiyahamba, ngizohamba	
(*ngahamba*)	(*ngiyohamba*)

Sotho:

kitsamaîle, kiatsamaya, kitlatsamaya	
(*kiile katsamaya*)	(*kiyatsamaya*)

Venda:

ndotšhimbila, ndiatšhimbila, ndiḓotšhimbila	
(*ndatšhimbila*)	

(I walked) (I am walking) (I will walk)

Slightly modified orthographies are used here so as to simplify the analyses. The Zulu examples are in the present orthography; for Sotho and Venda the present spellings are: *ke tsamaile, kea tsamaea, ke tla tsamaea, ke ile ka tsamaea, ke ea tsamaea*, and: *ndo tshimbila, ndi a tshimbila, ndi ḓo tshimbila, nda tshimbila*, which are both disjuntive orthographies.

The correspondence between the three basic tenses is striking. In the past, Venda uses a modified concord while Zulu and Sotho use the suffix *-ile*. In the present tense there are no differences, nor are there any in the future where Zulu employs *-zo-*, Sotho *-tla-* and Venda *-ḓo-* derived from the verb meaning "come," viz., *-iza, -tla* and *-ḓa*.

In the narrative tenses, too the similarity is striking, the only difference being that Sotho *may* prefix an auxiliary verb *-île*. That the difference between Immediate and Remote is only incidental to the Narrative idea in these tenses is shown in Zulu where the "Immediate" may be interchanged with the "Remote," for example, *Ngihambile nyakenye* (I left last year) and *Ngahamba nyakenye* (I left last year). The fact that both forms may be modified by *nyakenye* proves to me that the distinction Immediate-Remote is only secondary.

With the second future forms in Zulu and Sotho *ngiyohamba* (or *ngohamba*) is perhaps the only one which may be a future. But even here the idea "go to" may come out as, for example in the place name "*Sofa-sonke* Township" (We-go-to die together Township).

In Sotho the form *kiyatsamaya* may be used with future significance, but the basic idea is "go

to do". Perhaps the difficulty arises from the English use of "go" as an alternative future auxiliary, for example, I am going to eat.

From these basic tenses the compounded tenses of the past and the future may be formed by using an auxiliary verb (usually a form of Bantu *-ya* (become):

Past-Perfect Past-Present Past-Future

Zulu

ngiße-ngihambile, ngiße-ngihamba, ngiße-ngizohamba

Sotho

kine-kitsamaîle, kine-kitsamaya, kine-kitlatsamaya

Venda

ndovha-ndoṭuwa, ndovha-nditšhiṭuwa, ndovha-ndi-tšhiḍotuwa

(I had gone) (I was going) (I was intending to go

These may have the following narrative forms:

Zulu

ngaße-ngihambile, ngaße-ngihamba, ngaße-ngizoha-mba

Sotho

kine-kiîle-katsamaya

Venda

ndavha-ndoṭuwa, ndavha-nditšhiṭuwa, ndavha-ndi-tšiḍoṭuwa

N.B. The present orthographies are: *ke ne ke tsamaile, ke ne ke tsamaea, ke ne ke tla tsamaea; ndo vha ndo ṭuwa, ndo vha ndi tshi ṭuwa, ndo vha ndi tshi ḍo ṭuwa*, etc.

Future-Perfect Future-Present Future-Future

Zulu *ngizoße-ngihambile ngizoße-ngihamba*

Sotho *kitlabe-kitsamaîle kitlabe-kitsamaya*

Venda

ndiḍovha-ndoṭuwa, ndiḍovha-nditšhiṭuwa, ndiḍovha-nditšhiḍoṭuwa

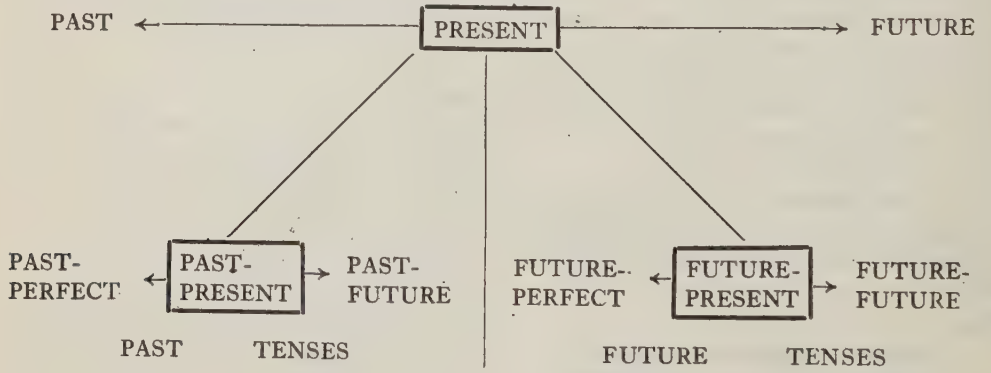
In Zulu there are further forms using *-yo-* in place of *-zo-*.

(I will have gone) (I will be going) I will be going to go)

These nine tenses form the basis of the conjugation of all predicates. The Past and Future are the main compounded tenses. There are other compounded tenses which are however secondary to these, for example, the Zulu *ngiße-ngise-ngihamba* contraction to *ßesengihamba* where *-se* may only stand after the primary auxiliary *-ße* and not before.

The conjugations here described are possible for all non-stative ideas, and are used with verb stems only. The stative conjugation is based on these forms which are determined by the significance of the stative.

Thus the two main conjugations of Bantu are: (A) Non-Stative Conjugation and (B) Stative Conjugation. For the Non-Stative Conjugation all the above forms may be used. The following diagram will illustrate these non-stative tenses:—



The stative conjugation, on the other hand, can not be conjugated in any of these tenses. Only the Present, Past-Present and Future-Present forms may be used in the conjugation of the stative ideas. Stative verb stems, naturally, fall into this classification:—

Present : Past : Future :
Zulu
ngihlezi, ngiße-ngihlezi, ngizoße-ngihlezi
Sotho
kilûtsi, kine-kilûtsi, kitlabe-kilûtsi
Venda
ndodzula, ndovha-ndodzula, ndiḓovha-ndodzula
(I am sitting) (I was sitting) (I will be sitting)

The Sotho and Venda spellings are : *ke lutse, ke ne ke lutse, ke tla be ke lutse ; ndo dzula, ndo vha ndo dzula, ndi ḓo vha ndo dzula.* These statives are distinct from the conjugation of the corresponding forms denoting the action or process involved in getting to the state. The conjugation of these action forms is slightly different from the normal conjugation of the action verbs -:—

Zulu
ngiyahlala, ngahlala, ngizohlala
Sotho
kialûla, kîle kalûla, kitlalûla
Venda
(*ndikhoudzula*—I am busy . sitting down, and other such compounded forms e.g. in the past *ndamboḓidzula* (whereupon I sat down), *ndadzula fhasi* (. . and then I sat down)etc.).

The conjugation of the action "become" expressed by some form of Bantu *-va*, is also interesting :—

Past Future
Zulu
ngaba (*y*) *inkosi ngizóba* (*y*)*inkosi*
Sotho
kibîle murena kitlaba murena
kîle kaba murena
Venda
(*ndavha khosi* (and then I became chief), etc.)
I became chief) (I will become chief)

Thus the idea of "being" and that of "becoming" are strictly differentiated in Bantu. There are numerous stative stems in Bantu for, example :—

Zulu
-khathele, -lambile, -omile, -hlezi, -imi, -suthi
Sotho
-khathetsi, -lapîle, -nyorîlwe, -lûtsi, -emi, -khutsi
Venda
-neta, — , — , *-dzula, -ima, -fura*
(be tired, be hungry, be thirsty, be seated, stand, be replete).

These stative tenses are really past tense, past-perfect, or future-perfect as far as the action is concerned, and the state to which they lead persists in the present, past-present or future-present.

Besides the stative verb stems the following are also states : Copulatives, Progressives with *-sa-*, Potentials, forms expressing "just completed", Habituals, and a few others. None of these can form their past or futures in the basic tenses. They must employ the stative conjugation : Present .. Past Present .. Future-Present. The following examples taken from Sotho will illustrate this :—

Present : Past : Future :
kimurena, kine kili murena, kitlabe kili murena
(I am a chief, I was a chief, etc.)—Copulative
kisaja, kine kisaja, kitlabe kisaja
(I am still eating, I was still eating, etc.)—Progressive
nkaya kine nkaya (*kitlabe nkaya*)
(I may go, I am able to go ; I was able to go, etc.) —Potential
kitswabona kine kitswabona kitlabe kitswabona
(I come from seeing, i.e. I have just seen : I had just seen, etc.
kiye kiboni kine kiye kiboni kitlabe kiye kiboni
(I usually see, I usually saw, etc.)

The present orthography spells these as : *ke morena, ke ne ke le morena, ke tla be ke le morena, ke sa ja* , etc., *nka ea*, etc., *ke tsoa bona* etc., *ke ee ke bone*, etc.

The scheme set out above may be represented as follows :—

(A) Non-Stative Conjugation :—
Present, Past, Future.
Past-Present, Past-Perfect, Past-Future.
Future-Present, Future-Perfect, Future-Future

The present, past-present and future-present may also be described as continuous tenses. The past tenses have also narrative forms whose secondary function is, or may be, remote. The future employing *-ya* may be classified with the stative conjugation as they have a present tense, a

past present, and a future-present, for example, Sotho *kiyabona* (like *kitswabona*), *kine kiyabona*, *kitlabe kiyabona*.

(B) Stative Conjugation :—

Present

Past (corresponding to Past-Present)

Future (corresponding to Future-Present)

Under this conjugation may be listed :

(a) stative verb stems (*kilûtsi*)

(b) copulatives (*kimurena*)

(c) *-ka-* (potential : be able to . . .)—(*nkaya*)

(*d*) *-sa-* (progressive : be still doing)—(*kisaja*)

(e) *-tswa-* (just) finished doing)—(*kitswabona*)

(f) *-ya-* ((just going to do)—(*kiyabona*)

(g) Habituals using auxiliary verb *-ye* (*kiye kiboni*)

Similar lists may be compiled for Zulu and Venda.

The study of the auxiliary deficient verbs is a further field of investigation revealing many interesting facts. These auxiliary verbs may be classified into (a) those having a primary function, for example *-ne* (past), *-tlabe* (future), *-kabe* (potential) and (b) those having a secondary function for example, *-se*, which can have forms with the three mentioned in (a), *kise kibona* (I already see), *kine kise kibona* (I was already seeing), *kitlabe kise kibona* (I will already be seeing), *nkabe kise kibona* (I would already be seeing,) *kise kiboni* (I had already seen) etc., etc.

From the analysis described here it may be concluded that the potential need not be classified as a separate mood for the South-Eastern Bantu languages as it falls into the stative conjugation. If this classification of the potential is not acceptable, the only other alternative would be to consider progressives, habituals, etc., etc, as separate moods. In both cases the definition of *mood* must be considered for Bantu. If the first suggestion is accepted, however, the " moods " for the Bantu predicate would be :—

(a) Indicative mood (with the participial as a dependent or sub-mood).

(b) Subjunctive mood.

This analysis shows the Bantu predicate to have a very simple and logical function. All forms begin with the present tense to which are allied the past tense and future tense. These ideas of time may then be again projected into past and future.

THE RELATIVE-LOCATIVE CLAUSE OR ADVERBIAL CLAUSE OF PLACE IN XHOSA

J. M. JEANJAQUET

As far as I have been able to ascertain, this chapter of the Xhosa Syntax has not been analysed in detail by any of the authors who have dealt with the language until now. As however these clauses are of a very frequent use, it might be convenient to know some more facts about them.

The two names given to these clauses, come from the function they fulfil in a sentence, and the form their predicate takes. We call them "Adverbial Clauses of Place"[1] because they complete or determine the meaning of the main clause with an idea of place. For instance in *Ndilazi ilizwe apho ikhona igolide*, the three last words form the adverbial clause which completes the meaning of *Ndilazi ilizwe* by stating that the question is about the place *where* gold is to be found. On the other hand we can also call these clauses "Relative-Locative" because their predicate is put in what is often called the relative mood in Xhosa, i.e., the special form which is given to the verbs in the ordinary relative clauses,[2] and even sometimes the locative clause takes the form of an ordinary relative clause, to which it is in any case morphologically closely related.

The classical form of the clause is that introduced by the adverb of place *apho* and closed by the other adverb of place *khona*. So for instance[3] in Judges 5/27 we have: *Wawa apho waguqa khona*. In this case, the verb of the subordinate clause is in the remote past tense (aorist), and cannot morphologically be distinguished from the form it would assume in a main clause. In Amawele 53/16, however, we read: *Ubuye u-Ngqika eThambo apho athethene khona nezizwe ezimhlophe.* The verb here is in the perfect tense, person singular, class one, and the subjectival concord used with it is *a-* not *u-* as would be the case in a main clause. Since we have got here neither a subjunctive nor a potential in *nga-*, nor a negative form, that subjectival concord *a-* can only be that of a *relative* predicate. About this same example, we have further to notice the respective positions of the words in the locative clause: the predicate is between the two adverbs of place *apho* and *khona*, and the object of the predicate is after *khona*. The same sequence appears also in the following examples:—

G. 30/13: *UThixo wase Beteli apho wasithambisa khona isimo.*

G. 33/19: *Wathenga isiziba somhlaba, apho wayitwabula khona intente yakhe.*

S.R. 193/14: *uV. wamisa umzi wakhe kuSohota apho wasebenza khona iminyaka emibini.*

Amagqunukhwebe 12/15: *Emngameni apho wasel' emi khona ngoku.*

However, when the direct object of the predicate of the locative clause is an infinitive conveying the main idea, it can be put before *khona* as we read in *Amawele* 16/12: *Emana ekhunjuzwa ngabalingane bakhe, apho afuna ukuphazama khona;* and again in *Amawele* 85/39: *Ma kaye apho athanda ukuya khona.* The same construction obtains when the predicate is a verb in the reciprocal form and must be completed by an object introduced by the conjunctival prefix *na* to make

[1] See *Text Book of Zulu Grammar*, by C. M. Doke, Third Edition, Page 332, Par. 796.

[2] See *African Studies*, Volume IV, No. 1, (March 1945), page 28 *et passim*.

[3] All statements in this study, are based on actual examples taken from Xhosa literature, and it has been thought best to give the references to all quotations. For this example, the following abbreviations have been used: for the Bible, the first figure, indicates the chapter, the second the verse. G. means Genesis; Nm. means Numbers; M. St. Mark's Gospel; Joh. St. John's Gospel: Rom. Epistle to the Romans; J. Epistle of James. The other books of the Bible are referred to in full and the quotations are made from the Union Version. Among other books quoted, S.R. stands for "Senior Reader" of the "Stewart Xhosa Readers," of Lovedale, the first figure giving the page, the second the line. *Amagqnukhwebe* stands for *Ibali lamaGqunukwebe* of Alfred Z. Ngani; *Amawele* stands for *Ityala lamaWele* of S. E. K. Mqhayi (5th edition, 1922). Other books when quoted are given with their full title.

sense, as in *Amawele* 84/38 : *Amakhwenkwe apho kudityenwe nawo khona ;* or in Nm 17/4 : *Ententeni apho ndihlangana nani khona.*

In some rare cases, even an ordinary object is entered after the predicate, before *khona*, as in Joh 6/23 : *Indawo apho ßabedle isonka khona.* This is, however, rather a seldom occurrence and should not be followed as a rule.

When the subject of the predicate is included in the locative clause, two different constructions are possible. The first is similar to the one just reviewed with the ordinary object, that is to say, the subject is put after *khona*, as in G. 35/27 : *UYakoßi waya eHebron, apho ßaße ngaßaphambukeli khona uAbraham noIsakę ;* or in G. 2/11 : *Lowo ujikeleze ilizwe laseHavila, apho ikhona igolide ;* or in Colossians 3/1 : *Funani izinto zaphezulu, apho akhona uKristu ;* or again in *Amagqunukhwebe* 14/21 : *EThwecu apho wayemi khona uKama.*

That construction always obtains when the predicate is prefixed by an impersonal subjectival concord, like *ku-*, standing for a real subject which may be a collective noun, or composed of several nouns of the same or different classes, as for instance in G. 10/14 : *AmaKeseluvi, apho kwaphuma khona amaFilisti namaKafetori.*

The second possible construction consists in putting the subject between *apho* and the predicate. This is found in G. 30/38 : *Wazimisa iintonga emikhumbini yamanzi apho impahl' emfut∫hane ißiza kusela khona ;* in G. 39/20 : *Inkosi yamfaka kuloo ndawo apho amakhonkxwa ökumkani aßekhonkxwa khona ;* and again in Joh. 1/28 : *EYordan apho uYohanne wayebaptiza khona*

From all the examples quoted ,as well as from many others we met with (Cf. i.a. G. 21/17, *Amawele* 41/16, etc.), we can further make the following remarks :—

(1) The concord used with the predicate of the locative clause is the same as the one used in the ordinary relative clause when the antecedent is a noun without initial vowel.

(2) The enclitic suffix *-yo-* is never attached to the predicate.

A few more examples will illustrate special forms of this classical locative clause :—

(1) In S.R. 204/4, we read : *Kulapho ndiphuma khona ;* where the main clause is only represented by the impersonal prefix *ku-* prefixed to the adverb *apho*, which gives a very crisp and concise expression for : " It is there where etc. . .) " The same is found in *Amawele* 97/8 : *Kulapho ukunene oku kuqaleke khona*, where we find the subject of the subordinate clause included, the clause itself having in its context a temporal rather than a spatial implication.

(2) In G. 28/15, we read : *Ndiya kukugcina naphi apho uya khona ;* where the introduction of the indefinite adverb of place *naphi* in the main clause before the locative clause, gives *to that locative clause* an indefinite and general meaning —(" wherever ").

(3) In Joshua 1/9, we read : *UYehova unawe apho sukuba usiya khona ;* a sentence which has, like the preceding one, an indefinite meaning, but this time it is due to the indefinite *sukuba*, which is entered after *apho*. Note also that the predicate of the locative clause is in the *participial* mood, following *sukuba*. This seems to be corroborated by what we read in M. 6/56. *ßaßesithi . . . nalapho sukuba eßengena khona ;* though the form *eßengena* could also be taken for an indicative progressive past (imperfect). Note in this example that the infinite idea is further re-inforced by the conjunctival particle *na-* prefixed to *apho.*

But in J. 3/4, we find something different : *Iye apho sukuba umlawuli anxhamele ukuba ingaya ngakhona.* In this case, *anxhamele* is not a " participle ; " morphologically it could be a subjunctive, but it is more probably the regular relative form used in the *apho-khona* locative clause, and the fact that it has taken the place of the " participle " we found in the two previous examples, is perhaps due to the presence of the subject *umlawuli* between *sukuba* and the predicate, thus neutralising the influence of *sukuba* placed too far away. It would however require more evidence to enable to formulate a definite syntactical rule on the construction of this *apho-sukuba . . khona* kind of locative clause.

(4) In Joh. 7/27 we read : *Uya mazi apho*

avela khona. Likewise in Joh. 9/29 : *Asimazi apho avela khona*. In these two examples, we find the subject of the locative clause anticipated in the main clause where it appears as direct object of the main predicate. This form is extremely frequent in conversation and colloquial style, often influencing semi-educated people, who translate it literaly into their English (" I don't know him ", for " I don't know where he is " or " where he comes from ", etc.).

The classical construction in *apho -khona* is however by no means the only one met with. Another construction, closely related to the preceding one, consists in using *apho* again to introduce the clause, but *kho* or *khoyo* to close it. That *kho* is of course the enclitic adverb of place used instead of *khona* in composition with the copulae and prepositional particles (as *ndikho*, *kukho* etc. .) and *khoyo* is the same, to which the enclitic *yo* has been suffixed. It is a form often used in ordinary relative clauses, implying an idea of presence or absence, as we find, for instance in *Amawele* 56/29 : *Olu hlanga lukhoyo*. As examples of the locative clause with *khoyo* we can quote G. 49/24: *Khon' apho akhoyò umalusi*, or J. 3/16 : *Kußakho isiphitiphiti . . apho kukhoyo umoona*.

In those two examples, the main clause contains already the adverb of place *khona*, or *khò*, and only the copula is used as predicate of the locative clause. The same construction is found (with *kho*) in the negative form. For instance we read in Nm, 22/26 : *Endaweni sapho ßekungekho ndlela*, and in Nm. 33/14 : " *ERephidim apho kwakungekho manzi*. There again only the copula is used as predicate of the locative clause. Unfortunately this construction is not frequent, and it is difficult to generalise from the few examples encountered. It seems however probable that the locative clause where *kho* or *khoyo* is subsitituted for *khona*, is used only when the predicate is the copula, but not even necessarily then, as shown in the example already quoted from G. 2/11 (*Apho ikhona igolide*), where the copula is prefixed to *khona*. Nevertheless, with the negative form of the coula, it appears that *kho* may be preferred to *khona*. I believe it would be more correct to say *Apho ingekho igolide*, than to say *Apho ingekhona igolide*, though this second form is not excluded.

A third construction—this one fairly frequent—consists in using only *apho*, not *khona*, *kho* or *khoyo*. This is illustrated by S.R. 227/3 : *Naphi na apho aßathwa ßazihlaleleyo*. Here, beside the fact that *knona* is omitted, we have to notice that the enclitic *yo* is suffixed to the predicate, as in ordinary relative clauses. Otherwise, there does not seem to be any difference of meaning between this clause and the other form, which here would be : *Apho aßathwa ßazihlalele khona*. Moreover this similitude of meaning is well shown by Joh. 21/18, where we find both constructions in the same sentence with the same meaning. The verse reads : *Uhambe apho uthande khona . . . uya kuzolula izandla . . . akuse apho ungathandiyo*. The first locative clause has *khona* to end it, the second has nothing after the predicate except the suffix *yo-*.

When the predicate of the locative clause has an object, it takes the enclitic suffix *yo-*, only if it bears the emphasis, as is the case with ordinary relative clauses. So for instance we read in G. 20/15 : *Hlala apho kulungileyo emehlweni akho*. Against this we have S.R. 11/24 : *Nakiindawo apho ifuna iinyoka namacikilife* ", where the emphasis is on the direct object and where the predicate does not take *yo*. Likewise we read in G. 31/13 : *EBeteli apho wabambathisa ngesibambatiso kum*, or in *Amawele* 82/30 : *Ezintaßeni apho kuphuma iKoßonqaba*. A future, though taking the regular relative concord, will not of course take the suffix *yo*, as shown in Nm. 23/13 : *Siye ndaweni yimbi apho uya kußona*.

The same obtains with the imperfect or pluperfect tenses, as in Joh. 4/46 : *EGalili apho amanzi eßewenze*[1] *iwayini*. In this example we must also notice the unusual place given to the object : due to the strong importance of the word in the sentence it is put before the predicate and repeated with it under the form of an objectival concord ; this is an emphatic but unusual construction.

[1] The concord *e* used with the third person, class one, of the near imperfect and pluperfect tenses, is an alternative form for *u* ; it is also used in the participial mood, and in relative clauses instead of *a* or *o*. (Cf. Mc.Laren-Welsh's " A Xhosa Grammar ", 1636, page 91 and 92.)

When the subject of the predicate finds itself included in the clause, it is usually put after the predicate, as in most ordinary relative clauses, as we can see in Rom. 5/20 : *Uɓaɓalo lwaphuphuma apho sandayo isɔono ;* and in *Amagqunukhweɓe* 10/5 : *Emngaza apho kumi ngoku isizwe sama-Mpondo*, where the construction of the predicate is impersonal.

As is the case with the *apho . . . khona* construction, we also find here sentences where the main clause consists only of the enclitic copula *ku* prefixed to *apho*, giving the same kind of concise expression. This we find in G. 21/31 : *Kulapho ɓafungayo ɓoɓaɓini ;* or in G. 35/7 : *Kulapho u-Thixo wazityhilayo kuye ekuɓalekeni kwakhe . . .* (In this instance, the subject *uThixo* is before the predicate, because of *kuye* and the string of complements following it, which would otherwise have thrown this subject too far back.)

Another case worthy of attention is the use of the defective verb *ukuthi* as first predicate of that kind of clause, to give a general and indefinite meaning to the sentence. Thus we read in G. 30/30 : *Ukusikelele apho unyawo lwam luthe lwanyathela ;* or in M. 6/10 : *Hlalani khona apho nithe nangena endlwini.* Of course the enclitic *yo* is not to be found in such instances, because the verb *ukuthi* never takes it, and the second predicate is in the subjunctive mood (of co-ordination ; past tense in the two examples quoted), which does not takethe enclitic-suffix either. This construction with *ukuthi* as first predicate of the locative clause has not been met with by me anywhere with the *apho . . . khona* kind of clause, nor with the *apho . . . . kho* or *-khoyo* ones. It would therefore appear that it is used only in the case where *apho* alone is found, without another adverb of place to close the sentence.

In all other cases it seems that either the construction with or without *khona* may be indifferently used.

But there exists still another form of the locative clause where, contrary to what we have just seen, *khona* or *kho* (?) is used alone, without *apho* to introduce the clause. Very few instances of this construction, however, are met with ; and, so far, it has been found only with the copula as predicate as illustrated by G. 13/3 : *Kuloo ndawo yayikhona intente yakhe mathanci.* The negative would most likely be : *Kuloo ndawo yayingekho intente yakhe mathanci.* It must be remarked that the predicate is constructed as it would be in an ordinary relative clause, and this brings us to a fifth kind of construction in which the locative clause is morphologically identical with an ordinary relative clause.

We find this for instance in G. 40/3 : *Endaweni aɓekhonkxelwe kuyo uYosefu.* Here the locative clause has an antecedent which is the locative substantive *endaweni*, the predicate is preceded by the regular relative concord *a-* used when the subject is of the third person singular, class one, and is not the same as the antecedent of the clause. The antecedent itself is referred to in the locative clause, in the form of a " dative object " *kuyo.* We have there all the elements of an ordinary relative clause, but the meaning is that of an adverbial clause of place and could as well be rendered by *Endaweni apho aɓekhonkxelwe khona uYosefu.*

We find numerous examples to illustrate this sort of clause, the antecedent of which is a substantive in the locative ; for instance : Nm. 35/25 : *Emzini aɓeɓalekele kuwo ;* Acts 1/13 : *Egumbini eliphezulu aɓaɓehlala kulo.*

In other cases, the locative implication of the antecedent is given by prefixing to it the " prepositional " particle *ku*, as in *Amawele* 98/4 : *Kwindawo oɓukuyo (umthi).*

Again in other, cases, the antecedent is simply a noun of place and it is not put in any way in the locative, as we read in Joh. 7/42 : *Umzana aɓe kuwo uDavide ;* John. 19/41 : *Inchwaɓa elitʃha ekungazanga*[1] *kuɓekwe mntu kulo ;* Acts 4/31 : *Indawo aɓaɓehlanganisene kuyo ;* Acts 2/2 : *Indlu yonke aɓaɓehleli kuyo.*

When the antecedent is determined by a demonstrative pronoun, the short relative concord is regularly used, as in ordinary relative clauses in the same case. So we have in Nm. 13/27 : *kwelo zwe wasithuma kulo* (also Nm. 15/18) ; *Amawele* 98/7 : *Loo ndawo uɓukuyo (umthi) ;*

[1] The concord *eku* used for class eight in the relative clause appears fairly frequently, instead of the relative clause.

Joh. 19/41 : *Kuloo ndawo aßeßethelwe emnqamlezweni kuyo* (also Joh 6/21) ; Acts 7/33 : *Indawo leyo umi kuyo* (*wena*).

Sometimes this kind of locative clause has a purely temporal meaning, provided the antecedent is a noun implying an idea of time instead of space ; otherwise the construction is ecxatly the same, as illustrated by Judges 4/14 : *Imini u Yehova amnikele ngayo uSisera esandleni sakho ;* or in Nm. 9/18 : *Yonke imihla elathi zinzi ngayo iliju phezu komnquba,* (a construction which is exactly parallel to that found in Nm. 9/17 with a spatial implication : *Endaweni elithe zinzi kuyo iliju*) ; or in *Amawele* 22/29 : *Ezi ntsukwana mbini ndisaphanyazo.* This last example is a very concise form, where the antecedent is not referred to again in the locative clause. That clause consists only of the predicate in the relative mood and the locative-temporal idea has to be extracted from the context. Such instances are rare.

A few general remarks about this construction of the locative clause similar to that of an ordinary relative clause, can be deduced from the examples given. Firstly, though in all cases except in the temporal ones, the classic construction *apho . . . khona* could have been used, we must notice that this locative clause depends on a precise antecedent, and is never employed to give merely a general or more or less vague idea of place.

Secondly, the suffix *yo* is never added to the predicate of the locative clause when the antecedent is referred to in a " dative object," because that object (*kuwo ,kulo, kuyo . .*) always bears the emphasis.

Thirdly, the rules governing the use of the concord with the ordinary relative clause are strictly adhered to.

Before summing up what we can infer from this survey of the adverbial clause of place, I still have to quote another form, only one example of which I have been able to find. It is in Joh. 11/30 where we read : *Kuloo ndawo uMarta wamhlangaßeza ekuyo.* This construction stands for : *Kuloo ndawo apho wamhlangaßeza khona uMarta,* or *Kuloo ndawoo apho aßekhona xa wamhlangaßezayo uMartha ;* and it is difficult to explain. The antecedent is referred to in a participial form (*ekuyo*), which is so-to-say a clause in itself. In any case such an occurrence is unusual and should not be taken as a paradigm.

Having thus reviewed practically all the different constructions of the locative clause, or adverbial clause of place, it is now possible to conclude this paper by a certain number of remarks toward a better understanding of the syntax of that clause.

(1) For all practical purposes, we may say that the locative clause can be constructed in three different ways :—

(a) By using both the adverbs of place *apho* (always the first word of the clause) and *khona* (always put after the predicate) : in this case the short relative concord is always used with the predicate, and the enclitic *yo* is never suffixed to it. The subject and object (s) of the predicate can both be put after *khona.* The subject can alternatively be put between *apho* and the predicate ; and the object, if indispensable to the intelligence of the clause, between the predicate and *khona.*

(b) By using only *apho,* to introduce the locative clause. In this case also the short relative concord is to be used, but the predicate takes the suffix *yo* if it is alone or bears the emphasis. Only this kind of construction can be used when the introduction of the defective verb *ukuthi,* as the first predicate of the locative clause, is deemed necessary to give it a general or indefinite meaning.

(c) By using an ordinary relative clause, the antecedent of which must then be in the main clause, and must be either a noun in the locative or a noun of place. This antecedent will be referred to in the locative clause in the form of a "dative object" like *kuwo, kuyo, kulo,* etc., according to its class. This construction is used only when the idea of place it brings about is precise and well defined. It can also be used to give location in time, when the antecedent is a noun of time, and is referred to in the locative (temporal) clause in the form of an " ablative object " like *ngawo, ngalo, ngayo,* etc., according to its class.

(2) Beside these constructions, it may be noted that, when the copula is the predicate of the locative clause, *khoyo* or *kho* may be substituted for the *khona* of the first construction mentioned, especially when the predicate is in the negative

form. In such cases, the adverb of place *apho* may also be omitted altogether. This however is not a usual construction.

These remarks are probably not exhaustive, for Xhosa has an astonishing range of syntaxical possibilities ; but it is hoped that they may be of help towards a better exploration of those possibilities.

COLONIAL POLICIES TO-DAY

G. V. O. BULKELEY

Books dealing with territorial administration in Africa continue to appear. It is noticeable that most, if not all, of these are serious studies prepared by persons or committees well qualified to do so, and who have exercised great care to obtain accurate details and data before publishing the results of their investigations.

It is also noticeable that in all these books and studies it is the treatment of the Native African and his opportunities for future development which form at the same time the foundation and the key-note. In short, it is apparent that the welfare of the African has become a matter of international concern and that world opinion has to be satisfied.

Two new studies in African affairs,[1] prepared in and issued from the University of Pennsylvania, are no exceptions to this general trend. They are scholarly treatises, clearly the result of extensive and painstaking research. Care has been taken so to present the facts that no offence will be given to anyone. While this denies some vigour to the writing, it ensures a level presentation which is no less convincing. Should a sentence be sought to express the object of these two books, it might be found in the ancient principle of moral law, *opus justitiae pax ;* peace must be the work of justice.

Another emergent is that in Continental Africa from 10 degrees north latitude to the Cape, all territories are bound together by the cement of similar African people evolving from a uniform level of cultural habit and tribal organization. It is obscurant for any of these territories to say "Our Native policy is our own. Hands off it!" What is actually true is that Native policy has become the fundamental criterion by which the impact of European civilization as a whole is being measured under the searchlight of international thought now being directed upon it.

[1] *Colonial Policies in Africa*, by H. A. Wieschhoff and *Labour Problems in Africa*, by John A. Noon, University of Pennsylvania Press. 1944. 10s. 6d.

It is probably for this reason that while the book dealing with policy refers specifically to Colonial policy, that author has found that "occasional reference to the Union of South Africa was not only unavoidable but mandatory."

Any consideration of African affairs today must be read against the new background of those sections of the United Nations Charter—recently entered into at San Francisco—which deal with dependent people and with Trust Territories.

In the Charter it is stated that nations responsible for the administration of territories occupied by dependent people ". . recognize that the interests of the inhabitants are paramount and accept as a sacred trust the obligation to promote the well-being of the inhabitants and to ensure, with due respect for the culture of the peoples concerned, their political, economic, social and educational advancement, their just treatment and their protection against abuses; to develop self-government; to take account of the political aspirations of the peoples and to assist them in the progressive development of their free political institutions according to their varying stages of advancement."

The Charter also provides for Trust Territories (i.e., existing mandated territories; those taken from the enemy in the present war and any other which Colonial Powers may offer as such.) In respect of such territories the Charter lays down as basic objectives ". . . . to promote the political, social and educational advancement of the Trust Territories and their progressive development towards self-government or independence, as may be appropriate to the particular circumstances of each territory and its Peoples and the freely expressed wishes of the people concerned. To encourage respect for human rights and for the fundamental freedoms of all without distinction as to race, sex, language or religion and to encourage the recognition of the interdependence of the peoples of the world."

The foregoing quotations seem to give the core

of the provisions made in lengthy form in the complete wording of the Charter. There does not seem to be any specific provision made in respect of those nations which nurture within their own metropolitan borders a population of dependent people. It would, however, be difficult for any such Nation to ignore, with any sense of honour, those principles for welfare, justice and advancement which the Charter makes obligatory on Colonial and Trustee Nations. Countries so situated would include the United States of America with its 12 million Negroes and the Union of South Africa with its 8 million Bantu and the other non-white peoples.

In the introduction to his book, Dr. Wieschhoff calls attention to the different descriptions which the Colonial Powers have designated the African territories which they administer. These comprise colonies proper, colonial protectorates, protectorates proper and mandates.

It is pointed out that under international law only colonies proper, protectorates proper and mandates have standing. Colonial protectorates were mostly based upon agreements hastily made with Native Chiefs during the second half of the nineteenth century with the purpose of excluding any other Power from occupying any particular territory. It is satisfactory to note that " while all Colonial Powers were involved in this policy of offering protection to Native States, Great Britain is the only one which honoured at least some of the original treaties which were signed between Native African rulers and the various British representatives. Most of these protectorate treaties were completely ignored by the Powers agreeing to honour them. . . ."

Protectorates proper are those of Zanzibar and Morocco ; also, probably, the Buganda section of Uganda with its own hereditary ruler the Kabaka.

As the author states : " France, Italy, Portugal and the former Congo Free State (now Belgian Congo) always regarded and treated their dependent areas as colonies only ; that is to say, as territories owned without any qualification or reservation."

Some essential differences between aims in colonial rule as practiced to date by the different Colonial Powers will be reviewed later in this study.

Early in his book, the author plunges into the controversial question " Do Dependencies Pay?" The economic advantages accruing to a country which administers colonies or protectorates are perhaps over-stressed. While they are not inaccurate in essence, their actual effects on the economy of the metropolitan country are very small indeed when expressed as percentages of its economic life.

In one of his enlightening books, Norman Angell has dealt exhaustively with this controversy. The following comments are largely based upon his arguments.

To speak of any Nation " owning " colonial territory is an illusion. Changing the nationality of the metropolitan country only changes colonial government. The real owners of assets in the colony remain the same unless there is confiscation. Neither can colonial produce be imported by the metropolitan country any cheaper than by the rest of the world unless there are discrimintory export and import duties—which are rare in British colonies and likely to be discontinued everywhere. Matters of exchange can and should be ironed out by an international exchange equalization organization, or by international agreements.

There is no reason why any trade arrangement in regard to colonial materials which Great Britain negotiated with the fiscally independent Dominions of the Commonwealth should not also be negotiated with, say, Denmark, from which Great Britain already imports a high percentage of dairy and farm products and which largely imports British manufactured goods.

The belief that it is necessary to " own " colonies in order to gain advantageous access to their products and raw materials is a fallacy. Territories having raw materials to export are only too anxious to get rid of them to all comers willing to pay for them and this includes the metropolitan country. The *Economist* has pointed out that :—

" It is safe to say that no industrial country has

[1] *This Have and Have-Not Business. Political Fantasy and Economic Fact.* By Norman Angell. (Hamish Hamilton).

ever, in time of peace, found itself discriminated against, in the matter of access to raw materials, by the colonial possessor of the raw materials. No colonial raw materials producer has ever refused, on orders from the mother country, to sell on equal terms to all would-be purchasers."

That colonies form markets for manufactured goods imported from the mother country, thereby supplying it with money wherewith to purchase needed raw materials from foreign countries, has a grain of truth ; but the annual figures expressed as percentages of the metropolitan's world trade are very small and largely derive from the purchases of colonial governments. Most colonial territories lie in the tropics where the Native people have small purchasing power.

The system may, indeed, act in a reverse direction. For example, it appears that the United States of America had to " dis-annex " the Phillipines in order to impose a tariff against those of her cheaply produced exports which penalized the U.S.A. produced article. Again, to quote Sir Norman Angell, supposing that a province of Canada became " owned " by the U.S.A., by what magic would the products of that province—which, as Canadian goods were subject to a penalizing tariff imposed by the U.S.A.—suddenly become good American products against which U.S.A. producers could claim no penalty ?

It is not necessary to " own " a territory in order to carry on an advantageous trade with it, for instance Switzerland and Sweden have no colonies but are highly prosperous. Great Britain did not have to own the Southern States of America in order to import cotton with which to build up her great nineteenth century cotton manufacturing trade. Again, it is not necessary to conquer a country in order to invest money in it. The U.S.A. has more money invested in Canada than in its " possession " the Phillipines. The Stevenson rubber scheme was restrictive, not discriminatory, and applied to all countries including Great Britain. As to colonies being territories able to absorb surplus population from the mother country, there were, it is stated, in 1914, more Germans earning their living in Paris than in all the then German Colonies.

The conclusions reached by Sir Norman Angell are that while the economic value of colonial territories to their metropole are insignificant in times of peace *their included value in time of war is very great ;* both as strategic bases for the fighting services, sources of raw material supply to replace those denied by war and (to a varying extent) augmentations of man-power.

Be the economic and wartime aspects of colonial territory what they may, the world is now entering a peacetime period. There the African territories remain, linked to their administrating nations. It is to analyse the past, deliniate the present and seek to unlock the future of these countries that the two books under review essay to do.

It is pointed out that colonial policy depends largely upon " the political theory prevalent in the metropolitan area of each Colonial Power." Also that, apart from the general political theory, " a colonial policy is greatly modified by the racial policy and racial attitude held by the colonizing Power."

Thus, the average Frenchman or Portuguese is less aware of a racial line than the British. A Frenchman will meet the Negro socially without qualms or affectation, always provided that he is of equal cultural level. The racial awareness of the Belgian lies somewhere midway between that of the British and French.

While the British are individually conscious of race, they do not in their colonies or protectorates " practice or justify discrimination against any other race." While generally keeping much to themselves socially, they treat the Negro quite correctly and with unaffected friendship when meeting him politically or in business. Officially, the British give allegiance to the principle stated by Mr. Winston Churchill at the Conference of British Premiers in 1921, that " there should be no barrier of race, colour or creed which should prevent any man from reaching, by merit, any station if he is fitted for it." A proclamation of faith very similar to the principle upheld by Mr. Cecil Rhodes of " equal rights for every civilized

man south of the Zambesi", and how finding a new, more closely deliniated echo in the United Nations Charter.

It is somewhat startling for us in South Africa to realize that African development under French administration has so far progressed that they were able to appoint a Negro civil servant as Governor General of French Equatorial Africa ; a man who proved to be of such calibre that he became the only French Colonial Governor to break with Vichy during the present war and so to render invaluable aid to the United Nations.

We read today, too, that in the British territory of Nigeria, an African lawyer has been raised to the Bench ; also that a civil servant of that race has been appointed British Consul-General in Liberia In Nigeria, for a long time one of the Principal Assistant Secretaries to the Government has been an African.

Perhaps the real progress which is being made by the Native African—the common man—is best exemplified by the railway, seaport and marine services in Equatorial Africa. For example : the Government Railway of Nigeria, which operates upwards of 2000 route miles, had, in 1936, a total staff of 17,000 of whom only 319 were Europeans (which number included provision for home leave every eighteen months). All workshops artisans, all stationmasters, almost all locomotive drivers, all locomotive firemen, clerical staff, shunters and draughtsmen are trained Africans. The railway operates normal services, including dining and sleeping cars, and its operational efficiency and statistical resultes are on a level with those of any other railway in Africa.

Apprentices to the engineering and traffic departments of the railway are selected by public examination in general knowledge held by the railway, a prescribed school-leaving standard (a little below matriculation level) being the necessary qualification for entry. Accepted apprentices do up to six years training in workshops and/or traffic training school.

Apart from periodical visits by European Inspectors, the railway stationmasters are completely isolated. They must work the trains through, receive and deliver consignments, issue tickets, receive and account for revenue. In the local village, they hold something of the position of local mayor and are looked up to by the people, which is all to the good.

The seaport and marine services are similarly staffed, ashore and afloat. Senior officers are Europeans. Responsible posts, such as lighthouse keepers, are held by trained Africans.

All this disposes of the myth that Native Africans cannot be trained, or that, if trained, they cannot function responsibly.

In discussing the administration of colonial territories, the author of the book under review deals at some length with the classic British system known unofficially as "indirect rule" and officially as The Native Authority. Who it was who first utilized existing hereditary authorities or councils as media through which to rule an alien country is lost in antiquity. Some trace its beginnings back to Jethro, the shrewd father-in-law of Moses, when, in Egypt, he said to his son-in-law :—

> "The thing that thou doest is not good. Thou wilt surely wear away, both thou and the people that is with thee ; for this thing is too heavy for thee; thou art not able to perform it of thyself alone. Harken now unto my voice, I will give thee cousel and God shall be with thee . . . . Thou shalt provide out of all the people able men such as fear God ; men of truth, hating covetousness, and place such over them to be rulers of thousands and rulers of hundreds and rulers of tens. . . .".

While this is not exactly selecting the natural rulers of a people through whom to act in administration, the delegation of authority is clearly very ancient in origin. Lord Lugard made successful use of the principle of indirect rule in Uganda and in Northern Nigeria ; while Sir Donald Cameron refined it into a philosophy of administration which he introduced in Tanganyika and expanded Lugard's system throughout Nigeria.

Briefly, indirect rule or Native Authority, means searching out with care the natural rulers of a territory (or section of a territory) and employing these as instructed and salaried media for its administration ; preserving what in the natural

[1] *Exodus*, chapter xviii, verses 17 to 21.

tradition is not repugnant to the Western ethic. Thus is introduced in a gradual manner and one understood of the people the progressive development desired, but without the shock of sudden impact which has proved disastrously bewildering to the Native mind under direct rule elsewhere in Africa.

As the book points out, increasing education overseas of young African men and women is introducing a new problem, as when these young people return to their native Africa, they are inclined to resent the gradual progress being made under the principles of indirect rule, to seek to trample under foot all the old traditions of their people and to substitute therefor a much more rapid development. To hold a balance in this respect will tax the statesmanship of British colonial administrators in the days to come.

"The nature of French colonial rule is quite different from that of the British. The French have never conceived a programme for colonial government which would ultimately lead to the self-government of their colonial territories. They embarked rather upon a policy of integrating their colonial holdings into a Greater France. . . . . ." Thus the author.

The inhabitants of French colonies in Africa are regarded as future Frenchmen, irrespective of their race or colour. France has met with difficulties in applying this policy; notably in those North African territories whose inhabitants are strongly entrenched in Muhammadan culture and social contacts. In areas wholly inhabited by Negroes on the other hand, attainment of the cultural standard required for French citizenship is necessarily slow. But it has moved and is moving.

A result has been the formation and growth in the French African Colonies of a Native *elite* who have either attained French citizenship (that is, who are "assimilated") or are well on the way towards doing so. The remainder are regarded as being "associated"; that is to say without too close an insistance upon cultural level provided all contribute towards the final goal of a united Empire of Frenchmen.

It is claimed that under this principle of association, while the French settler brings his superior knowledge and directive ability, the Native, no less, contributes his goodwill and his labour in varying degrees of skill: a combination of confidence and sympathy which will lead upwards towards the ultimate end aimed at. It has been and is believed by France that economic penetration of colonial territories will bring about a progressive association with French political and social institutions in the colonies.

Circulars issued in 1941 by the Governors of French Equatorial Africa and of the Middle Congo urged that "the African be developed on his habitual surroundings; that the traditions of the chieftaincy be upheld, and that the tendency towards individualism and detribalization be checked." In other words, a move towards the British system of indirect rule.

French policy is, however, still towards making Frenchmen out of Africans, the process being well described by Dr. W. B. Mumford in *Africans learn to be French*.

French law thus classifies Natives of the colonies :—(i) *Citoyen Francaise*. (ii) *Notables Evolues*. (iii) *Sujets Francaise*.

Of these, the great majority belong to the third category. The mid-category of *Notables Evolues* embraces those whose culture, knowledge of the French language and proven loyalty entitles them to it; while the first category is that of one hundred per cent French citizens entitled to all privileges and protected by French law.

The Native *elite* in French colonies hold administrative posts and are treated with consideration. It is held that under this system French culture and customs are more readily carried to the mass of the Native peoples than would be the case were administrative posts held solely by Frenchmen. There is little race discrimination where cultural level is equal and intermarriage is not uncommon.

Dr. Wieschhoff's conclusion is that "assimilative tendencies are more likely to be successful in French territories than in those where racial considerations determine the political or social pattern."

By common consent, present day writers on African affairs agree that the Belgian Congo is in

advance of other African territories in its steady development of Native welfare. No vague promises of self-government are held out, but, in persuance of a business policy for the economic development of the Congo resources to the utmost, a realistic view of Native participation therein is followed to the extent of requiring him to progress, even in spite of himself.

To quote again: "In accordance with this policy, the Belgians have devoted great attention to the improvement of Native health, the establishing of hospitals and housing, and a great awareness for Native welfare in general. It cannot be denied that in all this the Belgian administration has made much better progress than any other colonial government in Africa."

In Mr. Negley Farson's well-known book[1] he refers to this. He says:—

> "In it (the Belgian Congo) you find an astonishing growth of a Native middle class composed of clerks, railway employees, locomotive drivers, Native chauffeurs driving the big motor lorries of the Vici-Congo transport into all parts of the Congo, and an amazing number of first-class mechanics. Incidently you find them at work in good, well-paid jobs."

The financial association of the Belgian colonial government with the large concession companies furthers this policy. To quote Mr. Wieschhoff further: "The Belgians, as wise industrialists, realized that well-fed, well-housed, well-trained and contented Natives were better and more efficient labourers than those who were ill cared for." It will be remembered that Cecil Rhodes thought and acted similarly. When it was suggested to him that Native labour under de Beers was too well treated, he would reply that when he went among the men and heard them whistling and singing and chaffing each other he knew that all was well, and that he preferred this to seeing sullen faces and half-hearted work.

To quote at some length from *Colonial Problems in Africa*, which states the Native situation under Belgian rule very clearly:—

> "They (the Belgians) recognized that there was a definite relation between the expansion of industry and the available human resources, and that an unplanned exhaustion of the labour supply would react seriously, not only on the country's expanding industry, but on the expanding Native economy as well. The stabilization and maintenence of the Native village economy was regarded as vital and therefore not to be endangered by excessive recruiting of labourers for industrial enterprises. Industrial establishments attempted with considerable success to stabilize their labour supply by inducing their employees to bring their wives and families. They quartered their workers in attractively located brick and cement houses and at the same time supplied them with many of the amenities of European life. Under government regulation, the food provided these Natives is superior to that offered Africans elsewhere since it is selected on the basis of nutrition studies which, in recent years, have served as models for other African territories. In order to secure a well-trained labour supply for the future, the companies provide good educational facilities and, quite naturally, good maternity services. Thus any contrast of the living standards of Africans in the Belgian copper belt with those of the Natives employed in the adjacent copper mines in Northern Rhodesia will be very favourable to the Belgians."

So that for a realistic commonsense development of the Native African for the combined good of the country and of himself, the Belgian Congo must be credited with a forward policy which is in advance of that followed in any other African territory.

In regard to racial relations: the Belgians follow in the main the racial policy found in the British colonies. They do not allow racial awareness to interfere with the logical requirements of economic development, but do not follow the cultural assimilation policy of the French.

In reviewing Dr. Wieschhoff's very informative book, the ground is also prepared for the reception

[1] *Behind God's Back*, by Negley Farson. (Gollancz).

of that written by Mr. Noon. This largely comprises statistical figures, together with a statement on opportunities for employment, relating to every territory in Africa. These statistics have been most carefully prepared upon a common basis and, with their commentary, present an enlightening picture of Africa as a whole from a labour standpoint; something which does not seem to have been done before with the same discernment and accuracy.

The first 44 pages of this book are devoted to a study of the traditional forms of labour under African village economy and of the characteristics, ability, status and future of the Native African, in Central and Southern Africa, as a general workman. This study is extremely well done and it is not too much to say that every employer and administrator in Africa would profit by reading it. It if could be used as a basis for a short text book to give European children at schools in Africa some knowledge of their African neighbours, this would be all to the good.

In seeking to pierce the future and to take a long-range view of the affairs and development of Africa, it appears inescapable that the economic colour bar must disappear wherever it is to be found.

The exportable surplus of any industry in any country is that which (without any subsidy) can be offered in the markets of the world at a price, in relation to its quality, which the overseas buyer is prepared to pay. To secure an exportable surplus a large home consumer market must first be created through the payment of wages which enable all workers to purchase what they and other workers produce. Having so created a progressive home market, mass production methods can be introduced and an exportable surplus realized. It is clear that so long as the White man alone receives wages which enable him to purchase home-produced goods, the prospects for exportable surpluses from African countries of processed or manufactured goods are meagre.

There is another aspect of the economic colour-bar. Writing in a recent issue of a South African periodical,[1] Mr. F. A. W. Lucas, K.C., dealing in a concise and arresting manner with social and economic colour-bar issues, points out how retention of the economic colour-bar, apart from its injustice to the Native, is causing the position of the white worker to become more and more precarious because the employer, in his effort to reduce costs, trims the skilled worker's job by transferring to the low paid Native an ever greater proportion of its operations.

Such a process can only lead to eventual trouble. It would seem better far to face up to the realities and, at any rate, make a start by admitting the Native workman to semi-skilled work at a correspondingly improved wage, with the forward view of a prosperous Africa the aim. The Belgian Congo has already passed this stage and points the way.

A Director of Medical Services in Equatorial Africa once remarked to the writer that were malnutrition and parasitic disease eliminated from the Native African, what has come to be regarded by some as his inherent fecklessness would in all probability dissappear.

In his new book[1] (which everyone should read) Dr. Eustace Cluver reaches the core of this matter. He says:—

> "Malnutrition, other than crude starvation, is the result of subsistance on starch foods to the virtual exclusion of the protective foods. . . . . Extreme poverty is incompatible with health. The protective foods are more difficult to raise than the starch foods and, therefore, cost more."

These facts reach to the very heart of Native health and wages. They sweep like a searchlight across the length and breadth of Africa, penetrating the recesses of primitive ignorance and civilized hypocrisy alike.

It is to be repeated that from north latitude 10 degrees to the Cape, Africa to has be regarded as a continental whole. In the past harm has been done by narrow territorial outlooks. In its topographical and population alikeness (apart from climatic and floral variations) this great bulk of Central and Southern Africa has an important advantage over a continent such as Europe, where

[1] *Common Sense*, July 1945.

[1] *Birthright*, by Dr. Eustace Cluver.

so many diverse races make their homes. With the "vision splendid" of a prosperous Africa; its manpower potential fully realized; its men, women and children (White and Black alike) well nourished and in healthy homes, developing to the limits of their individual capacities—with this rational and achievable vision before them, the work of administrators in Africa is clear and beckoning.

BOOKS IN REVIEW

Fabian Colonial Essays. Edited by RITA HINDEN. 1945: London: *Allen and Unwin.* 261 pp. 8s. 6d.

The publication of twelve Fabian essays on colonial problems is an event as felicitous as it is timely. Mr. Creech Jones and Dr. Hinden, to whose tireless efforts the Fabian Colonial Bureau already owes so much, assemble a number of authorities to cover a wide range of subjects including such matters as "Socialists and the Empire" "Geography and the Empire", and "The Anthropologist's Point of View." No logical scheme is followed in the sequence of the contributions and the selective principle governing the choice of subject-matter appears to be one of general interest and readibility, in which aim all the experts succeed. No common ideology or uniform programme of action emerges, nor is Mr. Creech Jones in his introduction at pains to debate, reconcile or contrast the merits of the divergent conclusions of his team.

Many of the essayists are well tried stalwarts. Messrs. Brailsford, Horrabin, Leonard Woolf, Greenidge (the omission of the admirable W. M. Macmillan is regrettable) are all there, and one is pleased to find the Old Guard remaining true to itself. Mr. Woolf argues refreshingly for straight forward assimilation. Miss Margaret Wrong reaffirms the necessity of universal literacy. Mr. Horrabin still has the patience to expose the economic roots of imperialism, and Mr. Greenidge is informative on land alienation. But traditional liberal idealism betrays its weakness in the economic solutions put forward. Thus Mr. Greenidge has nothing more to propose on the "most urgent and significant of all questions," land-hunger, than using £18 million for the repurchase of alienated farms or for population transfers where the shortage is absolute. The logic of this evidently is that the Native in his untouched state was on the land and therefore, must, in perpetuity, be assured his mealie plot or banana grove. The author is untroubled by considerations of mechanisation or intensive methods of agriculture, the advisability of conversion of land into pasturage, industrialization and other more productive avenues let alone by any consideration of what would happen to the labour supply to mines, industry and railways, on which colonial prosperity so vitally depends, if an abundance of land were restored.

Such innocence is absent from the proposals of the socialist Fabians, who speak with the authentic voice of labour in their discussion of investment boards, planned development and the remittance of colonial profits. They use the term "socialism" which is more than the other contributors do, although they do not seem over-enthusiastic in their advocacy of it, and are reticent about the kind of socialism they have in mind. It is not the communist variety, on which Mr. Creech Jones is severe when he warns us that "an escape into the philosophy of Lenin or socialist monasticism does not bring better nutrition or the rearing of cattle in the tsetse belt." Quite a number of observers have been led to believe that the Leninist philosophy has not done so badly, where it has been tried, either for nutrition or cattle breeding. Dr. Hinden places chief emphasis on the creativeness of the masses, and Mr. Brailsford puts the question of conscience to the British Labour Party—what has it done to propagandize socialism in the colonies? Neither essay mentions Leonard Barnes's writings and do not know whether democratic Fabian socialists can embrace his views. Generally, one regrets the absence of references to authoritative spokesmen of other schools of thought, a "monasticism" shared by all the contributors. The Labour representatives are ably reinforced by Sir Drummond Shields, who brings his experiences of constitution-making in Ceylon to bear on "the tactical problems of the ordered retreat from imperial responsibility," and by Mr. Harold Stannard who uses an intelligent *Times* pen to report on progress in the West Indies.

Quite a different kettle of fish are the controversial trio Messrs. Furnivall, Fortes, and Ward. Taking the practices of the first Fabian to heart,

they tremble at any action for fear that our clumsiness might do irreparable harm to social harmony. Although Dr. Fortes rejects indignantly the charge that anthropologists attempt to mumify primitive society as "a typical scapegoat myth," he more than verifies the myth in his elegy on primitive virtues and Western viruses. His fervent *J'Accuse* blames modern economics for chaos, collapse and tension. Social change might be much beneficial if the primitive world in its subtly intermeshing entirety were to be refashioned as a whole, but in our "present state of sociological theory and the paucity of factual information," he doubts whether such an undertaking would be successful. And he ends with an eerie tiding of nemesis, in which the Native will have to drag his primitive cultural past through the worlds with him, like some childhood trauma, "whether he likes it or not."

It is clear that a little book of this seriousness and general appeal leaves us with more questions than answers in a discussion which is still in progress, but to which it makes a lively and constructive contribution. L.S.

Peoples of South-East Asia. BRUNO LASKER. 1944. London: *Gollancy*. 183 pp. 10s. 6d.

As its name suggests, this is a book of general knowledge about the peoples of South-Eastern Asia. It deals with their whole social and economic status, and some of their history, and gives an elaborate anthropological explanation of the origins of their indigenous economics. This latter seems somewhat out of proportion to the rest of the book, and rather for an academic reader than for the general reader for whom the rest is written. But the whole book is eminently readable, and full of positive information about peoples who, as the author complains, were before the war little known to the West, except to its technical anthropologists, or its imperialists and searchers after the bizarre and quaint. The peoples of Burma, Malaya, Thailand and the Phillipines and Netherlands Indies are all grouped together under the heading of South-Eastern Asia. They become real in this book, and their problems closely related to ours. So much is packed into its 184 pages that there is some reason for the whimsical remark of the author: "The reader is advised to disregard at least one half of the generalisations about peoples of this region he may have read—including perhaps some to be found in this book."

It has one serious weakness. Its outlook is that and that only of an Euro-American, looking at foreigners and asking what is to be done with them, to bring them into the expected brotherhood of Nations according to the "Big Three" social and industrial pattern. Its only philosophy is that of the inevitable. European industrialism is winning in the East too. "It is altogether too late to put a stop to an historic trend." . . . an argument that may mean no more than that might is right. The author does not pause to consider if the West can possibly learn something from the East. If there is something of the Spirit and Contemplation left in the East which the Activism of the West has lost. And yet the East did once give the West, in Christianity, a Faith that outlasted the cycle of civilization into which it came.

Apart from this Mr. Lasker is broadly liberal, and very careful in his analysis of social situations. He admits high values in the eastern social systems and sums up the race question by saying that the educated Burmese or Phillipino or Sumatran has no doubts as to his potential "equality" with Europeans. He deals in a sympathetic manner with all the conflicts that arise with the coming of European influences: local nationalisms, which he points out may be racial or merely social and patriotic; on local subsistence economies with the new money economics; of the old people with the young; of minorities within the subject peoples. Particularly interesting is his manner of dealing with Indirect Rule. He admits, for instance in the Burmese civilization, a true democracy, "unlimited mutuality . . high regard for personal freedom", perhaps more real because less self-conscious. But he notes the danger in Indirect Rule where the ancient ruler is no longer what he was, but occupied with money and becoming a financial magnate, a dealer in concessions and royalties. In this and in many other ways the whole book is most interesting to a South African

reader, giving a parallel of our problems in a context in which our prejudices are not immediately involved. Often the name of an African tribe could be written for the name of one of the South Eastern Asian peoples, and " Indian " or " Coloured " for " Arab " or " Chinese," and the sentence would exactly sum up a South African situation. For another point well brought out is the influence of pre-European foreign influences, chiefly the Arabs and Chinese, on South East Asia. Such medium peoples are a potent influence there as here, as little recognised and as difficult to fit in.

Mr. Lasker has no startling conclusions. Education, because it is necessary and desired; the changing of the imposed European profit economy into a service economy; the developement of local institutions to restore citizenship and community security under the new conditions. He favours the increase of the international element in colonization and mandates. There are few ideas in the book which will not be familiar to readers of the literature published by the South African Institute of Race Relations. (It was, incidentally, prepared under the auspices of the American Council of the Institute of Pacific Relations.) The interest of it is its introduction to us of 150 million people, forming alongside Africa and India the third large block of Coloured and subject peoples. They are peoples of very varied stocks, from Chinese to Negro types, and different stages of development from the almost wholly Europeanized town Phillippino to the most primitive Pacific islander. Yet the author makes a good case for treating them as a block, on account of their common European affiliations with France Britain and Holland, and their recent common cause against the Japanese. If peoples are to group regionally this seems reasonable, for they are neither Arab, nor Indian, nor Tibetan nor Chinese, but seem to have a common cause and common problems separate from all these.

F.S.

Medicine, Magic, and Sorcery among the Southern Sotho. By E. H. ASHTON. University of Cape Town: Communication from the School of African Studies. No. 10. 1943. 33 pp. 2s.

In this interesting essay, a chapter from a larger study, Dr. Ashton describes the training, technique and status of practitioners among the Southern Sotho in medicine, magic and sorcery. He distinguishes between the doctor, the diviner, the sorcerer and the witch, by their functions in the society, and he indicates to what extent their activities overlap. Medicines of many kinds are used not only in sickness, but, as among most peoples, in almost every situation where men seek to control natural and social phenomena, whether they be the making of rain or the adjustment of domestic relationships. In contrast to certain other Bantu tribes, the Southern Sotho practitioners have no particular status as an occupational class, but individuals derive prestige and power by their achievements. The work of the doctor and diviner meets with full approval. The actions of the sorcerer and witch are condemned as anti-social.

Dr. Ashton follows the Native classification in his judgements of social and anti-social. Medicines for used benevolent ends become " noxious " when directed by malevolent intent, the practitioner no longer acting as a doctor, but as a sorcerer. In discussing medicine and magic, the writer introduces the criteria of method and empirical result. Naturally the Sotho do not draw this line. He considers that ingredients which have inherent properties capable of producing results expected of them may properly be called medical, while those which have no such properties but whose successes have been due to extraneous factors, are magical.

Despite more than a century of contact with European civilization and many years of education, missionary influence and economic change, Sotho beliefs in the practise of magic and sorcery, as well as medicine, remains practically unshaken Even the educated Sotho are often only superficially incredulous. Dr. Ashton seeks to explain the persistence of this belief, a persistence noted by anthropologists in most societies. The rationale behind Sotho behaviour is that medical substances control certain phenomena and poten-

tially all phenomena can be controlled by the correct ritual. The knowledge of ritual is derived ultimately from "God." The Sotho do not see any essential conflict between the use of their traditional medicines and Christianity. "Both share the fundamental characteristic of ignoring the conventional limits of 'natural' causation and of going beyond, if not behind, the usual materialist admissions." The value of this essay will clearly be enhanced when the rest of the thesis is also available and the medicine, magic and sorcery will be seen in the broad context of modern Sotho life, correlated with religion, political, legal and economic organization.

H.K.

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CONTRIBUTORS TO THIS NUMBER

The Rev. A. M. Jones is a missionary in the service of the Universities' Mission to Central Africa, in Northern Rhodesia.

E. Westphal is a lecturer in Bantu languages at the University of the Witwatersrand.

The Rev. J. M. Jeanjaquet is a missionary working among the Xhosa in the Transkei.

G. V. O. Bulkely, c.b.e., has recently retired from the Colonial Service in Nigeria.